

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY : CRIMINAL TERM : PART 1

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO.
3825/2006

RICARDO JIMENEZ,

Defendant(s)

Trial

June 28, 2007

851 Grand Concourse
Bronx, New York 10451

B E F O R E:

THE HONORABLE ROBERT TORRES,
JUSTICE.

A P P E A R A N C E S:

ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
BY: LISA MATTAWAY, ESQ.,
DEBRA GUARNIERI, ESQ.
Assistant District Attorneys

PATRICK BRUNO, ESQ.
BRIAN WILSON, ESQ.
Attorneys for the Defendant

Also Present: MR. JOSEPH SHMULEWITZ, Intern

Catherine Mercorella,
Senior Court Reporter

1 THE COURT CLERK: Case on trial. People
2 of the State of New York versus Ricardo Jimenez.

3 MS. MATTAWAY: Your Honor, may I approach
4 with counsel before we start anything, please?

5 THE COURT: Step up.

6 (An off-the-record discussion was
7 held at the bench.)

8 (Whereupon, a recess was taken.)

9 THE COURT: Counsel, let's step in the
10 back off the record.

11 (An off-the-record discussion was
12 held in the robing room.)

13 THE COURT: On the record. Early this
14 morning the court clerk received a phone call from
15 what would be juror number eight, Ms. Rios,
16 indicating that Ms. Rios' mother was ill; she would
17 be taking her mother to the doctor.

18 Approximately about 10 o'clock, I talked
19 to Ms. Rios directly who indicated to me that her
20 mother has Parkinson's, has diabetes. Her mother had
21 some type of an episode last night, and they were
22 both up all night. She would be taking her mother to
23 the doctor.

24 She indicated to me that when her mother
25 has had incidents like this in the past, it has taken

1 her mother several days at minimum to get back to her
2 so-called normal self, and Ms. Rios was the primary
3 caretaker of her mother. She indicated without a
4 shadow of a doubt there would be no way she thought
5 she would be able to come in today at all and was
6 doubtful about tomorrow.

7 I will listen to counsel.

8 MS. MATTAWAY: Your Honor, I'm well aware
9 that it's the defendant's choice to substitute a
10 sworn juror with an alternate. The People, though,
11 submit that the juror probably should be replaced at
12 this point with alternate number one.

13 MR. BRUNO: Your Honor, you were kind
14 enough to advise us of this background information
15 off the record. I have had the opportunity to speak
16 at length with my client. He agrees, I believe, with
17 my position that realistically to wait for juror
18 number eight could risk delaying this trial three,
19 four, five days. Also, for situations like this, we
20 select alternates.

21 Having said that, my client and I agree we
22 will remove the present juror number eight and
23 substitute the alternate.

24 THE COURT: Okay. Thank you.

25 There is another issue. There was an

1 application made by defense concerning a new review
2 of the Grand Jury presentation in light of certain
3 items that came up in discovery specifically
4 concerning an issue of justification. The record
5 should reflect that I have read the Grand Jury
6 minutes. The defense team was kind enough to give me
7 the specific items of discovery that they were
8 referring to this morning. I went through those.

9 For the record, I am dealing with this
10 issue. I am accepting it as an application de novo
11 as opposed to an application for a reconsideration of
12 the original motion. I think this is a totally new
13 issue that came up. It is my position that
14 procedurally I can accept and deal with it as an
15 application de novo and I am not required by the
16 procedural laws or rules and regulations to refer it
17 back to the motion court.

18 Under the particular facts and
19 circumstances of this case and my review of both the
20 Grand Jury minutes and the relevant items of
21 discovery, it is my position that there was no legal
22 mandate or requirement to submit a justification
23 charge to the Grand Jury or submit any of those
24 items.

25 There is an exception to that, and the

1 record will reflect that.

2 MR. BRUNO: I appreciate you noting my
3 exception. Also, under the circumstances, I would
4 respectfully request that you direct the D.A. to give
5 me the Grand Jury minutes or the portion of the
6 minutes which incorporate the D.A.'s charge to the
7 Grand Jury.

8 I know normally that's not required. In
9 view of the issue I've raised, in view of your
10 decision, I believe an exception should be made. You
11 should direct the People to provide me a copy of the
12 charge, also the minutes of any witness who referred
13 to the victim having a handgun.

14 THE COURT: And your application for the
15 charge itself is based on what theory?

16 MR. BRUNO: Well, your Honor,
17 realistically, should my client be convicted, I
18 believe that this issue -- of course, no disrespect
19 to you -- I believe this issue would unavoidably be a
20 serious appellate issue. I would want to know in
21 advance, because from our end of it, this is still a
22 secret. I don't know whether any witness made
23 reference to the victim having a gun, and I don't
24 know whether -- I assume from your decision that
25 there was no charge of justification.

1 THE COURT: Correct.

2 MR. BRUNO: Again, I'm not making a new
3 application. I don't believe it's appropriate, but
4 my reasoning now is that if it wasn't elicited at the
5 Grand Jury that the victim and potentially his
6 friends pulled loaded guns, that might have been an
7 error from the onset of this case before I was
8 involved and before your Honor was involved. For
9 that reason, I would like to have available a copy of
10 the subject minutes.

11 THE COURT: Do the People wish to be
12 heard?

13 MS. MATTAWAY: Yes.

14 Your Honor, the People oppose defense
15 counsel's application. He's not entitled to the
16 charge.

17 With regard to the propriety of whether or
18 not self-defense should have been charged in the
19 Grand Jury, the People appreciate this Court's
20 ruling. I certainly concur with the ruling. I would
21 cite People versus Workman, 277 A.D.2d 1029; People
22 versus Harris, 98 N.Y.2d 452; People versus Samuels,
23 12 A.D.3d 695.

24 I would remind defense counsel that the
25 People are under no obligation to present Brady

1 material to the Grand Jury because I assume his
2 theory is that the fact that the victim had a gun,
3 assuming the victim had a gun, is Brady. The People
4 do not have an obligation to present this testimony
5 to the Grand Jury and, moreover, defense counsel is
6 now in possession of the Grand Jury testimony of all
7 the witnesses who testified before the Grand Jury,
8 and there is no mention by any witness who testified
9 before the Grand Jury of the deceased having a gun in
10 his hand. Therefore, the charge that was read to the
11 Grand Jury was appropriate at the time the case was
12 presented to the Grand Jury.

13 MR. BRUNO: If I may make one further
14 comment, your Honor.

15 THE COURT: Yes.

16 MR. BRUNO: The only point I want to make
17 to clarify the record, although I made this point
18 yesterday, I believe the D.A. is out of line when she
19 qualified it saying, "if the victim had a gun." I
20 reiterate what I said yesterday. We have to give
21 some credit to the following: An off-duty city
22 policeman and his then fiancée were sitting a few
23 seats from the victim. The victim, in fact, rushes
24 past the off-duty cop sort of angering him, "Who is
25 this nut pushing past me?"

1 The victim pushes past the cop to get to
2 the aisle to confront the shooter, and after this
3 tragedy ends, the off-duty cop literally takes a
4 loaded .38 Special, to be exact, which was stolen, by
5 the way, from a Pennsylvania state trooper a week or
6 two earlier, the cop takes this stolen gun from the
7 dead hand of the victim. I just wanted that clear.
8 Oh, and it's eventually vouchered.

9 THE COURT: At this point in time, your
10 application for the actual charge to the Grand Jury
11 is being denied.

12 MR. BRUNO: Thank you, sir.

13 THE COURT: I think that takes care of all
14 our housekeeping matters. At this point, we'll take
15 a ten-minute recess.

16 MS. MATTAWAY: Thank you.

17 (Whereupon, a recess was taken.)

18 (Whereupon, the unsworn jurors enter the
19 courtroom.)

20 THE COURT CLERK: Are the jurors
21 satisfactory to the People?

22 MS. MATTAWAY: Yes, they are.

23 THE COURT CLERK: To the defense?

24 MR. BRUNO: Yes, sir.

25 THE COURT CLERK: Jurors, please raise

1 your right hands.

2 Do you solemnly swear that you will try
3 the case of the People of the State of New York
4 versus Ricardo Jimenez in a just and impartial manner
5 and to render a verdict according to the law and
6 evidence, so help you God?

7 THE JURORS: Yes.

8 THE COURT CLERK: Just stay there one
9 second.

10 THE COURT: Counsel, step up, please.

11 (An off-the-record discussion was
12 held at the bench.)

13 (Whereupon, the sworn jurors enter the
14 courtroom.)

15 THE COURT CLERK: Case on trial continued.
16 All sworn jurors are present.

17 THE COURT: Good morning.

18 THE JURORS: Good morning.

19 THE COURT: You may be wondering about Ms.
20 Rios who was originally juror number eight. One of
21 her relatives became ill and she will not be
22 available to sit as a juror through the trial.
23 That's why we made the substitution. With any amount
24 of luck, from this point on, we won't have too many
25 more disruptions in the trial.

1 The trial actually began with the
2 selection of the jury, yourselves. What will happen
3 next is that we'll have what's known as opening
4 statements. The prosecution is required by law to
5 make an opening statement to the jury. It gives you
6 a preview or outline of the evidence they intend to
7 produce during the course of the trial.

8 After they have made their opening,
9 defense may, if he wishes, make an opening statement
10 also. I remind you that there is no requirement that
11 the defendant do anything during the course of this
12 trial. He has that presumption of innocence, and
13 that's still with him at this very moment, as we
14 discussed during the jury selection. However, if he
15 does choose to make an opening statement, again, it
16 will be more or less a preview of what they
17 anticipate happening during the trial. What counsel
18 for either side says during an opening statement is
19 not evidence.

20 After the opening statements, the People
21 will present their case. Again, as we discussed
22 during the jury selection, evidence comes in
23 primarily by way of oral testimony. The prosecution
24 will call witnesses to the witness' stand and ask a
25 series of questions. That is known as direct

1 examination. When the prosecution has concluded
2 asking their questions, defense will have an
3 opportunity to ask questions. That is known as
4 cross-examination. There may be additional rounds of
5 questioning. That will be referred to as redirect
6 and recross.

7 Once the People have called all the
8 witnesses they intend to call and presented all the
9 documents they wish to put into evidence, their case
10 will be over. At that point, if the defense wishes,
11 they will either rest or they may also put on a case.
12 Again, they are not required to prove anything or put
13 on a case of any nature. However, if they do decide
14 to put on a case and call witnesses, we will repeat
15 the same process but in reverse. Defense counsel
16 will ask questions. That will be his direct. The
17 prosecution will have an opportunity to ask
18 questions. That will be their cross-examination.

19 After the conclusion of all the witnesses
20 and evidence in the case, each side will be afforded
21 an opportunity to make closing arguments known as
22 summations. Summations will be followed by my
23 charging you on the law. After I have charged you on
24 the law, you will then retire to the jury room and
25 commence your deliberations.

1 Evidence in the case, the only evidence in
2 the case comes from the witnesses and whatever
3 documents that are admitted into evidence. Questions
4 in and of themselves are not evidence. It is the
5 question together with the answer that constitutes
6 the evidence; and where a question is asked and the
7 answer negates that question, you cannot assume that
8 the question has any factual basis. For instance, if
9 a witness is asked do they own an automobile and the
10 witness says no, you should not assume that they
11 really do own an automobile simply because the
12 question was asked. It is the question together with
13 the answer that constitutes the evidence.

14 During the course of the trial, either
15 side may object to a particular question or an answer
16 or both taking a position that that question and/or
17 answer is impermissible as a matter of law in this
18 particular case. If I rule or if I say "strike it,"
19 that means I made a legal determination that the
20 question and/or the answer is legally impermissible
21 according to the rules of evidence, and that is no
22 longer part of the evidence or part of the record.

23 There are times where I'll say "strike
24 it." I'll say "sustained, strike it." Whether I say
25 the words "strike it" or not, if I sustain an

1 objection, that question and/or the answer is no
2 longer part of the evidence. If I rule, if I say
3 "overruled," that means I made a legal determination
4 that the question and/or the answer is permissible
5 under our rules of evidence in this case.

6 Do not hold against either side the mere
7 fact that they make objections. That is their job.
8 You should also not draw any inferences from my
9 rulings. In fact, you should draw no inferences from
10 anything I may say or do during the course of this
11 trial. I have no opinion in this case.

12 In that regard, you have noticed that at
13 times I have a computer sitting on the bench here.
14 You should draw no inferences from my use or nonuse
15 of the computer. I'll be using the computer and I
16 may be doing something that's not related in the
17 courtroom at that time. The only promise I make to
18 you is that at no time am I playing games on the
19 computer.

20 As we discussed, the jury is the sole and
21 exclusive judge of the facts of the case. It will be
22 your job to evaluate the credibility of the evidence.
23 I have no golden rule to give you to tell you whether
24 a particular witness is truthful or not truthful,
25 whether the testimony they are giving you is truthful

1 or not truthful, whether it's colored, mistaken or
2 outrightly false.

3 As we discussed during the voir dire, we
4 ask that you bring to this process the same mechanism
5 you use in your everyday life to evaluate people.
6 There is one rule I can give you at this time. If
7 you find that any witness has testified falsely about
8 a material fact, you are at liberty to disregard that
9 witness' testimony entirely or you may disregard so
10 much of the testimony as you believe to be false and
11 accept so much of the testimony as you believe to be
12 truthfully given.

13 You bring to this process the common sense
14 you use in your everyday life. I encourage you to
15 listen to the testimony carefully, observe the
16 witnesses, observe their manner in testifying, their
17 demeanor as an aid in helping you make your
18 determinations.

19 I am directing you not to draw any
20 conclusions until you have heard all of the evidence.
21 Keep an open mind. I encourage you to be on time.
22 You are charged not to discuss this case among
23 yourselves or anyone else. Obviously, at the
24 appropriate time at the end of the trial I will be
25 directing you to discuss it at that point so you

1 could deliberate, but until that point you are not to
2 discuss the case among yourselves.

3 There may be some media coverage of this
4 case. If for any reason you happen to see an article
5 about this case or some newscast of it, regardless of
6 where it is or the nature of it, you are to disregard
7 it completely or not to watch the newscast or read
8 the article of it. Again, your oath is to make your
9 determination based solely on what you see and hear
10 here in this courtroom.

11 Do not visit the location of the incident.
12 You are not allowed during the duration of this trial
13 to accept any benefit whatsoever in return for giving
14 information about the trial. If anyone attempts to
15 offer you anything to get information about the
16 trial, you are to report that immediately to court
17 personnel. If anyone attempts to improperly
18 influence your determination as a juror on this case
19 or approach you with any type of offer regarding this
20 case during the duration of your service as a juror,
21 you are, one, not allowed to do that and you are to
22 report that to court personnel immediately.

23 I do not allow jurors to take notes. It
24 tends to be distracting to your fellow jurors. We do
25 have an official record. You see the young lady

1 taking down every word that's been said, and at the
2 end of the case I will give you instructions as to
3 how you could make use of that official record if you
4 need something read back to you or you need to
5 clarify something.

6 As you've already been told, probably
7 several times at this point, the lawyers on this case
8 are generally friendly, outgoing people, but the
9 lawyers and myself are prohibited from having any
10 interaction with you at all during the course of this
11 trial. So, if you happen to bump into any of us in
12 the hallways of this building or on the street, in
13 Pathmark, no matter where it may be, and we act like
14 we don't recognize you and just walk past you, we are
15 not being rude, we are just doing what we are
16 required to do under the law.

17 Again, do not formulate any opinions or
18 conclusions about this case until you have heard all
19 of the evidence and I have charged you on the law.

20 Are there any smokers in this group? As
21 you are aware, you're not allowed to smoke anyplace
22 in the building, so, to the best of your ability, I
23 encourage you to attend to your smoking needs before
24 or after or on the luncheon break.

25 At any time during the course of this

cm/a Opening - People

1 trial, if any juror wishes to change your seat where
2 you're sitting in the box, please do not do so
3 without letting court personnel know. At this point,
4 these are the seats you should take every time you
5 come into the courtroom. If you want to change your
6 seat for whatever reason, just let court personnel
7 know that before you do it.

8 Also, at any time during the trial if you
9 need to take a break for whatever reason or you think
10 it's too cold or too hot in here or you're having
11 trouble hearing us, just kind of like raise your
12 hand, call somebody's attention or throw something at
13 me, and we will accommodate you.

14 We will now proceed with opening
15 statements.

16 MS. MATTAWAY: Thank you.

17 Good morning, ladies and gentlemen.

18 THE JURORS: Good morning.

19 MS. MATTAWAY: It was 1989. A first-class
20 stamp was 25 cents, the Cosby show was number one and
21 Driving Miss Daisy won the Oscar for best picture,
22 but the blockbuster of the summer of '89 was Batman.
23 It grossed \$250 million in the end, and it was the
24 movie everybody wanted to see and that included
25 Ricardo Jimenez and Sean Worrell.

1 They were both there at the Whitestone
2 Cinema on July 3, 1989. Batman was premiering and
3 the theater was packed. Neither of them came alone.
4 They were with other people. However, as so many of
5 us do before you go into the movie, first you have to
6 buy the snacks, and to do that they went to the
7 popcorn line.

8 What do we remember after 18 years? Why
9 would any of us remember 1989? Really good things
10 and really bad things. When you buy popcorn, you're
11 served by concession workers, and some of them will
12 take the stand at this trial and they will talk to
13 you about what they remember, about the fight at the
14 popcorn line, but I anticipate my evidence will show
15 that there was an argument in the popcorn line and it
16 was between Ricardo Jimenez and Sean Worrell and
17 other people.

18 How did it begin? How did it end? Who
19 started it? What about what the witnesses say will
20 be important for you? What may be not so important?
21 The witnesses will tell you about the argument in the
22 popcorn line. Unfortunately, Sean Worrell cannot
23 because he's dead, and Ricardo Jimenez killed him.

24 But back to the argument in the popcorn
25 line. How did it end? Ricardo Jimenez, who was

1 angry enough, uttered words to the effect of "I'm
2 going to go get my gun," and Sean Worrell, how does
3 he respond, unfortunately for him? "Go get your
4 gun." And without a care in the world seemingly,
5 Sean Worrell took his popcorn and took his drink and
6 went in to see Batman.

7 And this is where it gets interesting,
8 because my evidence will show that Mr. Jimenez,
9 having uttered the threat, does not let it drop, does
10 not just take his seat in Batman. No. He goes to
11 the car, and he gets the gun and he comes back into
12 the Whitestone Cinema and he goes right to Theater 1
13 and he hunts down Sean Worrell, the guy he had the
14 fight with in the popcorn line. You'll hear that.

15 Now, it was over in three shots. Ricardo
16 Jimenez, my evidence will show you, took the first
17 one, pop, and he gets Sean Worrell in the back.
18 Actually, it goes through the arm, ends up in the
19 chest puncturing a lung. You'll hear evidence to
20 that effect from my medical examiner who did the
21 autopsy or, excuse me, who will interpret the autopsy
22 report on Sean Worrell.

23 So, again, first bullet enters the back of
24 the victim. Second shot -- did Sean Worrell get a
25 gun? Yes, he did. You'll hear about it. Second

1 shot from Sean Worrell, I anticipate my evidence will
2 show, and it's ten feet up in the air, hurts no one.
3 Third shot from Ricardo Jimenez in the back, the back
4 of Sean Worrell's head, exits through the forehead.
5 Sean Worrell drops dead and it's over.

6 You will hear that Ricardo Jimenez fled
7 the theater, and there was pandemonium pretty much.
8 Ricardo Jimenez was apprehended at that time, a short
9 time thereafter the shooting. He was apprehended,
10 but you'll hear that the detectives had witnesses who
11 were understandably scared, did not want to
12 cooperate, and with no one to identify the shooter
13 and willing to come down and view a line-up, Mr.
14 Jimenez is let go.

15 However, you will hear that some 17 years
16 later, Mr. Jimenez is apprehended. How does that
17 happen? You will hear that the Cold Case Squad from
18 N.Y.P.D. picked up the file in about 2000, reexamined
19 the file, went out to re-interview witnesses.

20 Some people clearly remembered what
21 happened in the Whitestone Cinema on July 3, 1989.
22 Some were fuzzy. Some don't remember it at all, but
23 at least one person who remembered it was a teenager
24 at the time and he is now a grown man and he will
25 take the stand and he'll talk to you about what he

1 remembers about that shooting, but he'll tell you he
2 saw Ricardo Jimenez kill Sean Worrell in the theater.
3 What he saw with the eyes of a 15 year old he never
4 forgot and now as a grown man, he'll talk to you.

5 He also talked to the Grand Jury, and
6 that's why we are here, because the Grand Jury issued
7 an indictment and, as the judge told you, it's just
8 an accusation, but that's why we are here. I will
9 read from it now. It states: "Supreme Court of the
10 State of New York, County of Bronx. The People of
11 the State of New York against Ricardo Jimenez.
12 Murder in the Second Degree. The Grand Jury of the
13 County of the Bronx by this indictment accuses the
14 defendant, Ricardo Jimenez, of the crime of Murder in
15 the Second Degree committed as follows: The
16 defendant, Ricardo Jimenez, on or about July 3, 1989
17 in the County of the Bronx with intent to cause the
18 death of a person did cause the death of Sean Worrell
19 by shooting him in the head and chest with a loaded
20 pistol." And it is dated September 6, 2006.

21 That's why we're here, because that
22 witness testified before the Grand Jury, and he's
23 going to testify before you at this trial. He is
24 accused of murder. The Grand Jury returned this
25 indictment. That's why we're here.

1 How am I possibly going to prove that? I
2 can and I will because it's not just the witness who
3 testified before the Grand Jury who will testify at
4 this trial, it's other people who saw things, who
5 were there, even witnesses who weren't there but have
6 something to add.

7 As I told you in jury selection, some of
8 my witnesses have criminal records. You know that
9 going in. I ask you to keep an open mind, wait until
10 the witness testifies, don't judge the book by the
11 cover, wait until they talk to you about what they
12 remember, what they know, what they add to the story
13 and then make your decision about whether or not you
14 think you can believe these people and what they're
15 telling you, but there will be a number of witnesses
16 who will testify as well as police witnesses, and, as
17 I told you, there will be a doctor, a medical
18 examiner who testifies.

19 I believe that after you have heard all of
20 the People's witnesses that you will come to the
21 conclusion that Ricardo Jimenez did kill Sean Worrell
22 on July 3, 1989, and you will find him guilty.

23 Thank you.

24 THE COURT: Thank you.

25 Does defense wish to make an opening

cm/a Opening - Defense

1 statement?

2 MR. BRUNO: Yes, I will, your Honor.

3 May it please your Honor, ladies and
4 gentlemen of the jury, opening statement, a blank
5 pad.

6 His Honor told you my opening is optional
7 and half the time I don't open. I listen to the
8 D.A., and I mentally scratch my head and I say, well,
9 gee, should I open, and I chose to today because, you
10 see, based upon her opening 18 years after a murder,
11 let's throw in the towel. He's guilty. Take him
12 out. Hang him. But, it ain't that simple.

13 See, I have met none of these witnesses,
14 quite sincerely. I have my stack of papers, police
15 reports, whatever investigation my people could do.
16 I have a paper case right now. I have a flavor of
17 what I think she's going to present. Right now she
18 knows more than I. What I think I have here -- let
19 me start out being the bad guy. All right?

20 I have a Sean Worrell, a young man who
21 died young, yes, over a bucket of popcorn. It's
22 ridiculous. We have a Sean Worrell who went to the
23 opening night of Batman ready for trouble because
24 you'll hear not only did he have a piece in his
25 waistband, but at least one of his buddies did. So I

1 don't deny that he was shot. I don't deny that there
2 was a showdown out of the old west, but you'll see I
3 deny that it was Ricardo Jimenez.

4 Let me whet your appetite. These people,
5 whether 18 years ago or today, describe a man very
6 unlike Ricardo Jimenez, a man of a different race,
7 with a different accent. Try that on for size. And
8 she, the prosecutor, makes reference to, well, some
9 witnesses may have a criminal record and, yes, quite
10 candidly, I've dealt with many a witness and many a
11 client with a criminal record. They could be telling
12 the truth. I'll put that on the table up front, but
13 that's also not that simple.

14 One of her star witnesses is selling his
15 soul to get out of doing 30 years in federal prison
16 for murder as a result of drug trafficking. That's
17 one of her star witnesses who all of a sudden, yeah,
18 he was 16, years later decides, well, I could solve
19 that Batman murder. I was there that night. Yeah,
20 he's one of the guys with the victim. I was there
21 that night. Yeah, now I recall who it was.

22 Yeah, to save their souls, to try to cut
23 their sentences in half, you'll see all of a sudden
24 they recollect that it's Ricardo Jimenez. That's
25 what we are dealing with.

1 Again, I'm done right now. She knows a
2 lot more than I right now, but I'll question the
3 witnesses and God help me, I'll bring out the truth.

4 Thanks for your attention.

5 THE COURT: Thank you.

6 You may call your first witness.

7 MS. MATTAWAY: May I see if the witness is
8 in the hall, your Honor?

9 THE COURT: Go right ahead.

10 MS. MATTAWAY: Thank you.

11 (Brief pause in the proceedings.)

12 MS. MATTAWAY: The People call Kevin
13 Morrissey.

14 (Brief pause in the proceedings.)

15 THE COURT: Step up a minute.

16 (An off-the-record discussion was
17 held at the bench.)

18 THE COURT: Ladies and gentlemen, we are
19 going to ask you to excuse us for a moment. We have
20 a technical glitch. It should be no more than two
21 minutes.

22 (Whereupon, the jury exits the courtroom.)

23 (An off-the-record discussion was held at
24 the bench.)

25 (Continued on the next page.)

1 (Whereupon, the witness enters the
2 courtroom and takes the witness stand.)

3 K E V I N M O R R I S S E Y, having been called as a
4 witness by and on behalf of the People, having
5 been first duly sworn by the Clerk of the Court,
6 testified as follows:

7 THE COURT: You can bring the jury
8 back.

9 (Whereupon, the jury enters the
10 courtroom.)

11 THE COURT CLERK: Case on trial
12 continues. All sworn jurors are present.

13 THE COURT: Ladies and gentlemen, Mr.
14 Morrissey has already been sworn in. You may
15 inquire.

16 MS. MATTAWAY: Thank you.

17 DIRECT EXAMINATION

18 BY MS. MATTAWAY:

19 Q. Good morning sir.

20 A. Good morning.

21 Q. Please state your name for the jury.

22 A. Kevin Morrissey.

23 Q. Oh, you gotta (sic) speak up.

24 A. Kevin Morrissey.

25 Q. I would like you to project your voice all

1 the way back here.

2 A. Kevin Morrissey.

3 Q. Okay. Are you currently incarcerated?

4 A. Yes, I am.

5 Q. For what crime or crimes are you currently
6 incarcerated?

7 A. Counterfeit certified checks to purchase
8 automobiles.

9 Q. Okay. Approximately how many pending cases
10 do you have?

11 A. Five.

12 Q. And where are they pending? Can you speak
13 in the microphone, sir?

14 A. Certainly. Queens, Nassau County, Suffolk
15 County, Brooklyn, and Bergen County, New Jersey.

16 Q. Are any of your pending cases for crimes of
17 violence?

18 A. No.

19 Q. And what are the nature of your pending
20 cases?

21 A. The purchase of automobiles and counterfeit
22 certified checks from a financial institution and
23 those cars are re-sold after I purchased them.

24 Q. All of them?

25 A. All of them.

1 Q. Okay. why are you here today?

2 A. To give testimony in reference to the case
3 before the jury.

4 Q. All right. Are you aware of the incident?

5 A. I'm aware of what the defendant told me
6 about the incident.

7 Q. All right. Were you there when this
8 incident happened in 1989?

9 A. No.

10 MR. BRUNO: Objection, not a fact in
11 evidence.

12 THE COURT: Overruled.

13 Q. When did you first meet the defendant?

14 A. It was at the prison on the barge up in the
15 Bronx back, I guess, September of 2006.

16 Q. All right. Do you know the defendant's
17 name?

18 A. Ricky Jimenez.

19 Q. Do you see him here in the courtroom?

20 A. Yes, I do.

21 Q. Please point to him and indicate an --

22 A. Right over there.

23 Q. Over there?

24 A. Yes.

25 Q. What is he wearing?

1 A. Tan shirt, tan slacks, black sneakers.

2 MS. MATTAWAY: The record should
3 reflect the witness has indicated the defendant.

4 THE COURT: Indicating the defendant.

5 Q. What were the circumstances of your first
6 meeting with Mr. Jimenez?

7 A. I asked the correction officer for a razor
8 and they told me to come back. And I wanted to get
9 the razor before I get into the shower and I went into
10 the shower without the razor and he was kind enough to
11 give his ID and bring me the razor into the shower.

12 Q. And then what happened?

13 A. I told him thank you and that, basically, I
14 had a certificate in paralegal studies. I'm pretty
15 good looking up cases. If he needs help with
16 anything, looking up anything, I'm available.

17 Q. And what did he say to that?

18 A. Okay. I don't recall verbatim what he said
19 but, okay, that's good. And that was basically it.
20 And I was in the shower and I had no clothes on so I
21 was trying to cut the conversation short.

22 Q. Okay. Did you have another conversation
23 subsequent to the initial conversation about the
24 razor?

25 A. Many conversations.

1 Q. Many conversations?

2 A. Many conversations.

3 Q. About how many conversations have you had
4 with Mr. Jimenez since that day he gave you a razor?

5 A. Maybe about twenty.

6 Q. And where did they take place?

7 A. In the unit that we're housed on on the
8 boat on the Vernon C. Baynes Correction Center.

9 Q. Can you try to talk into the microphone,
10 sir?

11 A. Yeah, I'm sorry.

12 Q. And in which facility is this?

13 A. It's the barge in the East River in the
14 Bronx in the Hunts Point section.

15 Q. Is that part of Rikers Island?

16 A. No, it's not.

17 Q. It's separate from Rikers Island?

18 A. It's separate from Rikers Island.

19 Q. And tell us about the next conversation.

20 A. The very next conversation in reference to
21 the case that's pending?

22 Q. Yes.

23 A. Basically I was going to go to the law
24 library and look up some cases for him in reference to
25 the case that's pending before the Court.

1 Q. What did he tell you about his case?

2 A. It's an old case. It happened, you know,
3 late eighties. It was at a movie theater up in the
4 Bronx. I believe he said he was arrested in August on
5 it.

6 Q. August when?

7 A. Two thousand six, and he said that there
8 was several new witnesses on the case and he just
9 didn't know where they came from. He was very
10 surprised he got arrested on the case.

11 Q. All right. And, why did he want your help?

12 A. I don't know exactly why. I mean, I can't,
13 you know, get into his head but I believe he was
14 scared of the charges and he had no bail, and he did a
15 lot of jail time before.

16 MR. BRUNO: Objection, your Honor.

17 THE COURT: Sustained. Strike it.

18 Jury is to disregard that comment.

19 Next question.

20 MS. MATTAWAY: Yes.

21 Q. What did you say to him when he asked you
22 for help?

23 A. I said I would help him and, you know, I
24 would go down to the law library with him and, you
25 know, pull cases that were in reference to the case

1 that, you know, he was arrested on.

2 Q. And did you discuss the facts of his case
3 with him?

4 A. Yes, I did.

5 Q. What did he tell you?

6 A. Basically he was at a movie theater in the
7 Bronx and he got into an argument with this Jamaican
8 kid, and he thought the kid had a gun. And the
9 argument escalated and the kid was making motions
10 toward his waist. And he ran out to his car.

11 Q. Who went out to whose car?

12 A. Mr. Jimenez went out to his car. He had a
13 gun in his car. He came back into the movie theater,
14 he spotted the kid in the lower row in the movie
15 theater. He said, "Hey you", the kid turned around,
16 shot at him. He shot back at the kid, hit the kid,
17 ran out to his vehicle, took off and went back home.

18 Q. And where did he say he went after that?

19 A. I think it was the Soundview Projects where
20 he lived, his aunt's house.

21 Q. Did he tell you where he got the gun from
22 initially?

23 A. No.

24 Q. And did he tell you what the words were in
25 the popcorn line?

1 A. No. I believe it was just over the last
2 bag of popcorn.

3 Q. How did he know he was Jamaican?

4 A. I don't know that.

5 Q. And how did he know which theater to go to?

6 A. I don't know that either.

7 Q. Where did he say he went when he went to
8 the projects?

9 A. To his aunt's house.

10 Q. Did he say why he went there?

11 A. Because he was scared and that he told his
12 aunt what happened and his aunt was going to say he
13 was home sleeping at the time.

14 Q. And did he tell you what he did with the
15 gun?

16 A. He said he was running an operation out of
17 Clifton, New Jersey.

18 MR. BRUNO: Objection, your Honor.

19 THE COURT: Sustained. Strike it.

20 Next question.

21 Q. What did he physically do with the gun?

22 A. Gave it to his brother.

23 Q. Mr. Jimenez gave it to his brother?

24 A. Right.

25 Q. And did he indicate to you if he was

1 arrested?

2 A. Yes, he did. He said about five days later
3 he was arrested on the case and they never did a resin
4 test for powder burns. He was in custody for about
5 five hours. He described the detective. And he said
6 that he believed that the witness's mother wouldn't
7 let the son testify and one of his crew members got to
8 the witness so he couldn't be that witness.

9 Q. He couldn't --

10 A. He didn't think it was that witness who was
11 the witness now on this particular time that he was
12 arrested.

13 Q. In 2006?

14 A. Right.

15 Q. Okay. This witness back from 1989, you
16 said something about the witness's mother?

17 A. Right. The witness's mother wouldn't let
18 her son testify and he was released after he was
19 arrested.

20 Q. And Mr. Jimenez told you this?

21 A. Yes.

22 Q. And he said something about his crew?

23 A. He said one of his crew members got to the
24 witness and they scared him.

25 MR. BRUNO: Objection, your Honor.

1 THE COURT: Sustained as to
2 characterization. Strike it. Ask the question
3 again.

4 Q. Okay. He believed that --

5 MR. BRUNO: Objection as to his belief.

6 THE COURT: Sustained. Wait for the
7 question.

8 MS. MATTAWAY: Yes.

9 Q. What did Mr. Jimenez told you he did, if
10 anything, with respect to this witness from 1989?

11 A. Well, he didn't do anything.

12 THE COURT: Next question.

13 Q. He didn't do anything?

14 A. Right.

15 Q. Did he tell you he was aware of something
16 happening?

17 MR. BRUNO: Objection, your Honor.

18 THE COURT: Let her finish the
19 question.

20 Q. Did he tell you he was aware of something
21 happening to a witness in 1989?

22 A. Yes.

23 MR. BRUNO: Objection.

24 THE COURT: Sustained. Strike it from
25 the record. Next question.

1 Q. Did Mr. Jimenez told you that he personally
2 spoke to a witness from 1989?

3 A. No.

4 Q. Did Mr. Jimenez tell you why he believed he
5 was let go in 1989?

6 A. Yes.

7 Q. Okay. And what is it that he told you
8 about why he believed the witness was let go?

9 MR. BRUNO: Objection, your Honor.

10 THE COURT: Sustained, asked and
11 answered. Move on.

12 MS. MATTAWAY: Fine.

13 Q. Did Mr. Jimenez talk to you about his
14 identification procedure back from 1989?

15 A. I don't remember that, no.

16 Q. Did Mr. Jimenez talk to you about what he
17 was wearing at the time or how he looked back then?

18 A. Yes.

19 Q. What did he tell you?

20 A. He had two tattoos at the time, one on his
21 neck, one on his right hand. He had on a tee-shirt,
22 black shorts, black sneakers.

23 Q. And did he talk to you at all about his
24 race versus the victim's race? About his race?

25 A. (No verbal response.)

1 Q. Do you remember that?

2 A. I don't recall.

3 Q. Now, did Mr. Jimenez tell you what it was
4 that he yelled to the kid in the theater when he came
5 back in?

6 A. "Hey you."

7 Q. And what did the kid do in response to
8 that?

9 A. He fired a shot at Mr. Jimenez.

10 Q. And then what happened?

11 A. Mr. Jimenez fired a shot at him and the kid
12 went down.

13 Q. This is what he told -- Mr. Jimenez told
14 you?

15 A. Right.

16 Q. Now, did he ask you anything specific in
17 terms of your paralegal certificate ability to do with
18 regard to those facts?

19 A. Not to those facts, no. We were looking
20 into a due process issue, you know, with the time
21 lapse, you know, that went between the time of the
22 incident and now that he's been arrested.

23 Q. Okay. Did you and he talk? In other
24 words, of the shots and who fired first?

25 A. He said the kid he had the beef with fired

1 first at him and he returned fire.

2 Q. Did he tell you how many times he fired?

3 A. No. But I believe it was once, he said he
4 fired, the kid went down so he didn't say specifically
5 one time. He said he fired, the kid went down, and he
6 fled the theater.

7 Q. Did he tell you which part of the body he
8 hit the kid in?

9 A. No, I don't think so, no.

10 Q. You met with him about twenty times?

11 A. Right.

12 Q. What were the context of these meetings?

13 A. About the case, about, you know, prior
14 incarcerations, about neighborhood, you know, the jail
15 system, the justice system, you know, things like
16 that, normal things in jail, basic stuff.

17 Q. Okay. Now, when he described to you how he
18 shot once and the kid went down on the first shot, did
19 you have any reaction to that when you heard that?

20 MR. BRUNO: Objection as to his
21 reaction.

22 THE COURT: Sustained.

23 Q. Did you have any conversation about the kid
24 at all?

25 A. Well, I said something else.

1 MR. BRUNO: Objection. I'm going to
2 sustain.

3 Next question.

4 Q. Did he say he knew this kid?

5 A. No, I don't recall him saying he knew the
6 kid.

7 Q. Did he say anything about his feelings
8 about doing this?

9 A. I believe it was about the case in general,
10 where he said "Just some Jamaican."

11 MR. BRUNO: Objection, your Honor.

12 THE COURT: I'm going to sustain that
13 as not responsive to your question.

14 Q. Did he talk to you about his feelings about
15 firing the shot?

16 MR. BRUNO: Objection, your Honor.

17 THE COURT: I'll allow the question.

18 MR. BRUNO: May we approach --
19 withdrawn -- assuming he's admonished to give a
20 simple yes or no at this point, most
21 respectfully.

22 THE COURT: Correct. Did he talk to
23 you, yes or no?

24 THE WITNESS: Yes.

25 Q. And what did he say?

1 MR. BRUNO: Objection. May we approach
2 for an offer of proof?

3 THE COURT: Yes. Step up on the
4 record. Excuse us a moment.

5 (Whereupon, the following takes place
6 in the robing room amongst the Court and both
7 counsel, outside the presence of the witness and
8 the sworn jury.)

9 MR. BRUNO: May I be heard?

10 THE COURT: Go ahead.

11 MR. BRUNO: Relying upon Discovery
12 which is the only thing I can rely upon, I think
13 what the D.A. is trying to elicit as the answer
14 is that Mr. Jimenez, in response to that last
15 question says to the effect of, it didn't mean
16 anything to me, it was only a freaking Jamaican.
17 My point is this. The witness, the DA may
18 argue --

19 well, is that what you're eliciting?

20 MS. MATTAWAY: Yes.

21 MR. BRUNO: The DA may argue, arguing
22 as a lawyer that, well, if that's what the man
23 said, that's what the man said. On the other
24 hand, I have to maintain there has to be some
25 balance here. She would be eliciting that answer

1 solely to interject a racial hostile issue into
2 the testimony, noting parenthetically, quite
3 candidly, that at least one juror has the outward
4 appearance of a Jamaican-born person. Under the
5 circumstances, I don't think the DA should be
6 allowed to pursue that subject any further.

7 THE COURT: Go ahead.

8 MS. MATTAWAY: I would be willing then,
9 if that's Counsel's argument, to rephrase the
10 question and ask the witness, without any
11 reference to the race of the victim, did he say
12 anything about the victim. In other words, if
13 his answer is, the kid didn't mean a thing, as
14 opposed to, the Jamaican kid didn't mean a thing,
15 but it is what he said.

16 MR. BRUNO: May I respond?

17 THE COURT: Ahum.

18 MR. BRUNO: Of course you're the Judge,
19 but I'm responding as follows. I'm asking the DA
20 be totally precluded. But if you're going to
21 adopt her protocol, I ask that she actually lead
22 the witness and phrase the question that way, is
23 it correct that he said that kid didn't mean a
24 thing.

25 THE COURT: I agree with defense

1 counsel. I think if you want to get this in,
2 I'll allow the leading very precisely without any
3 reference directly or indirectly to any racial
4 background or element whatsoever. So I'll allow
5 you to lead on that one question with instruction
6 to your witness that he answer in a yes or no,
7 and then I assume we're moving on.

8 MS. MATTAWAY: May I refresh his
9 recollection so I can pinpoint him and say, have
10 him read it, refresh the line, and then say
11 without reference to the race.

12 THE COURT: No, I'm telling you there's
13 no need to refresh his recollection. He hasn't
14 indicated he can't remember. I'm telling you you
15 can ask him if what he told you was, I forget the
16 exact terminology, was just a kid or whatever he
17 said, without any reference whatsoever to any
18 racial issue. You can ask him, did he tell you
19 whatever that one line is, I apologize, I
20 haven't --

21 MR. BRUNO: That kid didn't mean
22 anything.

23 THE COURT: You can ask him that direct
24 question, either answer yes or no. You'll get
25 your answer and then you'll move on.

1 MS. MATTAWAY: Right.

2 MR. BRUNO: Thank you, sir.

3 MS. MATTAWAY: Thank you.

4 (Whereupon, the following takes place
5 in Open Court, in the presence of the defendant,
6 defense counsels, the Court, the assistant
7 district attorneys and sworn jurors, alternates
8 and witness.)

9 THE COURT: You may ask your next
10 question.

11 Q. Mr. Morrissey, I am going to address my
12 questions to something very specific.

13 Now, did you and Mr. Jimenez have a conversation
14 about what the kid meant to him? That is a yes or no.

15 A. Yes.

16 Q. Okay. Without any reference to race, what
17 did he tell you?

18 THE COURT: Sustained. That is not the
19 question I told you to ask. Now ask the question
20 I told you.

21 Q. What did he tell you?

22 THE COURT: Sustained.

23 Q. About --

24 THE COURT: Sustained.

25 MS. MATTAWAY: One moment please.

1 (Whereupon, there was a short pause in
2 the proceedings.)

3 Q. Mr. Morrissey, did Mr. Jimenez tell you
4 that the kid didn't mean anything to him?

5 A. Yes.

6 MS. MATTAWAY: Nothing further.

7 THE COURT: You may inquire.

8 MR. BRUNO: Shall I proceed? Your
9 Honor, may I use the podium?

10 THE COURT: Yes.

11 CROSS EXAMINATION

12 BY MR. BRUNO:

13 Q. Good afternoon Mr. Morrissey.

14 A. Good afternoon.

15 Q. Let me start here. You indicated here
16 that, in effect, your criminal history revolves around
17 forged or, you know, not regular certified checks
18 which are then used to purchase cars, correct?

19 A. Correct.

20 Q. And then the profit is then, the purchased
21 cars are then sold?

22 A. Correct.

23 Q. Are you related to the Morrissey family who
24 are involved in auto sales in Nassau and Suffolk
25 County?

1 A. Yes, I am.

2 Q. There is Morrissey Pontiac?

3 A. GMSC.

4 Q. They're very involved in the auto family?

5 A. That was my dad. He passed away in '98.

6 Q. Well, that part I'm sorry.

7 Well then, in effect, did you run the business?

8 In other words, when your dad was out of the business
9 -- withdrawn.

10 What I'm asking is your criminal activity,
11 forgive the approach, your criminal activity revolved
12 around illegally getting cars?

13 A. Yes.

14 Q. With forged checks?

15 A. Yes.

16 Q. Was that done in the course of your family
17 business, or in effect, you are on your own with your
18 enterprise?

19 A. I was on my own with my enterprise.

20 Q. And, in fact, your family still has the
21 successful GM dealerships on Long Island, correct?

22 A. Correct.

23 Q. Now, you indicated you're in jail for five
24 pending cases. You're in jail for five pending cases
25 all of which are basically the same MO, the same

1 genre, correct?

2 A. Correct.

3 Q. You get phony bank checks, buy cars, resell
4 them?

5 A. Right.

6 Q. And you have such cases pending it appears
7 -- withdrawn. All of these arrests we're discussing
8 now occurred 2006, correct?

9 A. Correct.

10 Q. And you have cases of this nature pending
11 in Bergen County, New Jersey?

12 A. Correct.

13 Q. And then Brooklyn, Queens, Nassau and
14 Suffolk, correct?

15 A. Correct.

16 Q. And am I correct that one of your
17 motivations for testifying here and not implying
18 corruption on the DA's part, by the way, one of your
19 motivations, by the way, is you want Ms. Mattaway as
20 an agent for the Bronx D.A.'s Office to intercede with
21 these other counties D.A. to give you a break?

22 A. One county, Queens.

23 Q. And, in fact, my understanding is that, in
24 layman's terms, you already have a deal where you can
25 get one to three years in Brooklyn and Nassau; am I

1 correct?

2 A. One and a half to three, Brooklyn, Nassau,
3 and Suffolk.

4 Q. Okay. And Queens is holding out. Queens
5 wants more time?

6 A. Yes, sir.

7 Q. Because Queens doesn't feel they're part of
8 New York City?

9 A. Exactly.

10 Q. They want to be the tough borough?

11 A. Exactly.

12 Q. Touch of levity. Forgive me.

13 Having said that, and again with all due respect,
14 but, you've been doing these scams now for about
15 thirteen years; am I correct?

16 A. Correct.

17 Q. And I'll go through it quickly. But back
18 in October of 94 you have a Grand Larceny which was
19 adjudicated in Suffolk County Supreme Court, correct?

20 A. Correct.

21 Q. And then in July of 97 you take a forgery
22 rap in Nassau County, correct?

23 A. Correct.

24 Q. And then in May of 97 you have a forgery
25 conviction in Suffolk?

1 A. Correct.

2 Q. And then in August of 97 you have, in
3 effect, a stolen car conviction in Carmel, New York?

4 A. Rent-a-car.

5 Q. Up in Putnam?

6 A. Lake Carmel.

7 Q. You travel a lot?

8 A. Family's all over.

9 Q. You got a lot of cars to go around in?

10 A. Quite a few.

11 Q. Lets move on.

12 October 2000 you got plea of guilty for petit
13 larceny in Queens?

14 A. Correct.

15 Q. And then December of 01 you got a petit
16 larceny in New Rochelle?

17 A. Correct.

18 Q. And then you got Westchester?

19 A. Yes, a lot of relatives in Westchester.

20 Q. Ma-ron.(phonetics)

21 Then August of 01 you got a petit larceny in
22 Putnam?

23 A. Correct.

24 Q. You went back to Putnam?

25 A. Lake Carmel.

1 Q. Then February of 04 you got an attempted
2 grand larceny in Queens?

3 A. Correct.

4 Q. Was that for a hot car, stolen car?

5 A. Car with a purchase, yes.

6 Q. Then March of 04 you got a plea of guilty,
7 possession of forged instrument, phony check?

8 A. Phony check.

9 Q. That was Nassau?

10 A. Nassau.

11 Q. Then February of 04 you got an attempted
12 grand larceny in Nassau?

13 A. Phony check.

14 Q. And then you stay -- withdrawn.

15 So then you didn't get caught with your phony
16 checks for two years?

17 A. I was in jail, that's why.

18 Q. Oh, so now you got these five, so you're
19 out of jail short time. You've got five raps now
20 pending in --

21 A. Four different jurisdictions.

22 Q. And, again, being a very direct man, you've
23 garnered a living now for at least the past thirteen
24 years being a professional con man, correct?

25 A. I guess you could surmise that, yes.

1 Q. I mean fooling and conniving?

2 A. I have worked in between.

3 Q. Oh, I'm sure, but fooling and conniving?

4 A. I wouldn't take a check from you, I mean.

5 Q. Right. I wouldn't accept a check from you.

6 A. Absolutely not.

7 Q. And without sounding a little too
8 philosophical, you chose this path in spite of the
9 fact that you are the heir to a very very very
10 successful car people on Long Island?

11 A. I'm -- You know, I got a drug problem and
12 the family kept their distance from me as the problem
13 escalated. I would admit that.

14 Q. Again, not playing God. It's a court of
15 law, In God We Trust, but I say, again, you chose this
16 path in spite of the fact that you would've been the
17 third generation involved with Morrissey General
18 Motors products?

19 A. Right.

20 Q. I'll leave you alone now about your
21 background. About the case at hand, am I correct, and
22 again, not saying it's improper, am I correct that
23 you, while in jail, from time to time, time to time
24 can make friends, get favors, and maybe even make a
25 few dollars by acting in the nature of a legal

1 adviser; is that correct?

2 A. Not making a few dollars, no, but I can
3 make friends, yes.

4 Q. Well, about the dollars. Am I correct that
5 if you do extensive research work for a fellow inmate,
6 the family members of the inmate may make deposits in
7 your commissary as a thank you?

8 A. That's never happened to me but that's the
9 norm. It's never happened to me all the time I'm in
10 jail.

11 Q. Quite candidly, as part of providing
12 services to Mr. Jimenez, did not his wife, Margie,
13 make two different deposits in your commissary
14 account, and not implying you committed a crime?

15 A. No.

16 Q. She didn't put in first twenty and then
17 fifteen dollars?

18 A. No, sir.

19 Q. Okay, leave that as it may.

20 Am I correct, and it's said politely, you are
21 more intelligent, more book smart than most of the
22 population at the barge; am I correct?

23 A. I'd like to think so.

24 Q. Well, that makes you, that's why you have
25 these extra services you can offer; am I correct?

1 A. It gives me something to do and, you know,
2 if I could help, I could help.

3 Q. Meaning you are what people in the jails
4 commonly call a jailhouse lawyer; am I correct?

5 A. It could be characterized.

6 Q. Like in the Cagney movies, you could give
7 legal advice, do legal research; am I correct?

8 A. I guess, yeah.

9 Q. And if not money, you might get an extra
10 sandwich, you might get protection if someone wants to
11 hit you?

12 A. I have never had that problem but, you
13 know, a candy bar, a phone call.

14 Q. Now, if it's not disputed, you did provide,
15 whatever term, legal counsel for Mr. Jimenez. As part
16 of preparing for this legal counsel, you might ask to
17 review whatever legal papers he had?

18 A. Personally, I make a policy not to.

19 Q. Why is that? Withdrawn.

20 Are you telling us that you provide these
21 services, for example, in this case, you were pursuing
22 what we commonly call a speedy trial issue?

23 A. Well, due process issue in order, if there
24 was sufficient evidence to arrest him eighteen years
25 ago, why arrest him now.

BCgm

Morrissey-Peo-Cross

53

1 Q. Pretty good. What we call constitutional
2 speedy trial; is that correct?

3 A. I guess you could --

4 Q. As opposed to what the procedural law
5 provides for?

6 A. Correct.

7 Q. And you were --

8 Well, you were retained for that purpose in jail,
9 correct?

10 A. No, I wasn't.

11 Q. In Mr. Jimenez's case?

12 A. No.

13 MS. MATTAWAY: Objection.

14 Q. You counseled him in that regard?

15 THE COURT: Overruled.

16 A. I spoke with him in reference to the case
17 and that was it. I wasn't retained. I wasn't paid.
18 I wasn't compensated, if that's what you mean.

19 Q. I abandon that. You denied that Margie
20 gave you money?

21 A. That is correct.

22 Q. I moved on. I moved on. That's okay.

23 But having -- something was said that maybe I
24 elevated you too much. I get retained. You do
25 whatever.

1 Did you engage in providing research or legal
2 services for Jimenez?

3 A. I did research, yes.

4 Q. And as a preface before you sat down to do
5 your work, you did not review what we commonly call
6 Discovery?

7 A. No, it was all oral admissions in reference
8 to this case.

9 Q. You didn't review documents provided either
10 by my offices or documents forwarded by me from the
11 D.A.?

12 A. No. I thought he had an Irish attorney.

13 Q. I'm sorry.

14 A. I thought he had an Irish attorney. He
15 mentioned the attorney's name. I don't --

16 Q. That's interesting. So you thought having
17 heard my name -- Were you confused by the fact that my
18 last name sounds Italian and my first name, Patrick,
19 sounds Irish?

20 A. Yes.

21 Q. My late father was Paswale. We will put
22 you at ease. We have solved that mystery.

23 A. Okay.

24 Q. You provided, whatever you want to call it,
25 legal research or document research, you know, for a

1 speedy trial research without ever looking at
2 Discovery?

3 A. I don't believe at that point in time he
4 had any Discovery to look at. I never looked at any
5 documents or materials.

6 Q. That's interesting. Let me ask you. You
7 said you believed I was Irish, correct?

8 A. Correct.

9 Q. What did you base that on?

10 A. When he told me who his attorney was.

11 Q. Did you ever see him carting around his
12 package of Discovery with my firm name "Bruno and
13 Ventura" on it?

14 A. No. I didn't notice that.

15

16 (Continue on the next page.)

17

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Morrissey-People-Cross

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1 Q. And you didn't notice him carting around in
2 that a number of letters which were signed and typed
3 Patrick Bruno? You didn't observe that, right?

4 A. No. It was early on.

5 Q. And since I'm almost done since you never saw
6 his discovery I'll ask you sort of hypothetical.

7 A. Okay.

8 Q. All this stuff you're reporting today a
9 Jamaican got killed, that's in the discovery, isn't it
10 sir hypothetically?

11 A. I can't answer hypothetically because I
12 didn't look at the discovery.

13 Q. And it was a fight over popcorn that would be
14 referred to in the discovery?

15 A. I don't know. I didn't look at that time.
16 I'm going by oral admissions that were made by him.
17 That's it.

18 Q. And the fact that the press had a ball with
19 this calling it the "Batman" murder, that would be a
20 looney toon to the discovery?

21 A. I didn't look at the discovery.

22 Q. You're the jail house lawyer that doesn't
23 look for any background reserve, correct?

24 A. I thought Rosario material gets handed right
25 before trial. I didn't know discovery gets -- I

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1 thought it was like Federal Court. It's 3500 material.
2 You get it right before trial. I had just come in off
3 the street. I was on vacation in New Jersey and, you
4 know, this was something new to me. I believe he just
5 had gotten arrested too because we were transferred to
6 Riker's Island after that.

7 Q. By the way, who is Federal Marshal Craig
8 Michael Cane?

9 A. It's a U.S. marshall that I'm acquainted
10 with.

11 Q. Acquainted in what way?

12 A. He arrested me several times before.

13 Q. Are you related in any way?

14 A. No.

15 Q. Is it common practice to communicate with a
16 U.S. Federal Marshal by his first name Dear Craig?

17 A. No. I wouldn't call it common practice, but
18 I've had dealings with Marshal Cane before and I know
19 him to be honest and, you know, diligent so I figured I
20 would get the information to him and he would get it to
21 the proper persons.

22 Q. Am I correct, did you first get involved in
23 this case meaning you're gonna be a witness against
24 Ricardo Jimenez, you first get involved here by writing
25 a warm personal letter Dear Craig, correct?

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1 A. Correct.

2 Q. In that letter you outline maybe you could
3 help out what had been a big press case years ago; is
4 that correct?

5 A. I didn't say a press case. I remember the
6 contents of the letter. I said I'd like you to be
7 there if anyone wants to speak to me about it. I wrote
8 that letter ten months ago and I didn't hear anything
9 until about a month ago and I was surprised.

10 Q. And you were surprised that the DA wasn't
11 ready for trial until a month ago?

12 MS. MATTAWAY: Objection.

13 THE COURT: Sustained.

14 Q. Am I correct the communication I'm referring
15 to and you're agreeing, you basically tell Craig can
16 you hook me up with the Bronx DA, I could provide
17 information, correct?

18 A. I said in substance in the letter this is the
19 information I have. Please get it to the proper
20 authorities and if you need me I'd -- if they need to
21 talk to me, I'd like you to be there.

22 Q. And you didn't send that letter in the
23 context of being a boycott. You sent it hoping to use
24 it as leverage in your case; am I correct?

25 A. Yeah, sure.

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1 Q. Now, by your own admission and I'm not
2 rubbing it in, you've been in jail off and on over the
3 last past decade?

4 A. Yes.

5 Q. Am I safe to assume you've acted as counsel
6 or jail house lawyer on many occasions?

7 A. A few.

8 Q. It's your testimony you've never reviewed
9 legal documents in preparing to assist the other
10 inmates?

11 MS. MATTAWAY: Objection.

12 A. Never.

13 THE COURT: Overruled.

14 Q. In fact, you said early on you make it your
15 policy not to. Why is that?

16 A. Because after you are released from jail you
17 could be subpoenaed to come in and give testimony at a
18 later date. And if I didn't review the documents, I
19 can't be questioned about them. I could just be
20 questioned about what the conversation was with the
21 person that I had the conversation with.

22 Q. You're saying you could be subpoenaed for
23 having read documents?

24 A. As a witness against the person and then it
25 gets a little bit muddy if you reviewed 3500 material

Morrissey-People-Cross

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1 or you reviewed anything that was court documents.

2 They could say that the information might have been
3 derived from that way.

4 Q. So with all due respect, you're now giving us
5 double talk?

6 A. No.

7 MS. MATTAWAY: Objection.

8 A. I'm just trying to explain myself.

9 THE COURT: Sustained. Next question.

10 Q. You've come across fairly astute at least
11 with a workmen's knowledge of what goes on in a
12 courtroom, okay?

13 A. Okay.

14 Q. You're telling us that if you read in Mr.
15 Smith's court documents that the sky was blue that day
16 the day of the shooting, you could walk into court and
17 quote that I once read the sky was blue, that would be
18 blatant hearsay?

19 MS. MATTAWAY: I object right there.

20 A. I don't understand.

21 Q. Sir, you fully understand.

22 THE COURT: Next question.

23 A. No. I don't fully understand. It's based on
24 oral admissions made. I didn't review any particulars.

25 Q. By the way, have you cut deals before?

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1 A. Yes.

2 Q. How many times?

3 A. Twice.

4 Q. So this is your third time or your second?

5 A. Third time and there is no deal to cut. I
6 didn't sign any proffer. I didn't sign anything. A
7 phone call may be made. That was it. And they were
8 quite clear on that.

9 Q. So you're hear testifying hoping to get
10 Queens to join in your plea bargain is the bottom line?

11 A. I would hope Queens would adjudicate the case
12 the same as the other boroughs, but Queens is very
13 tough and I don't have a good lawyer like you.

14 Q. Thank you. I hope you're sincere.

15 A. I am.

16 Q. I won't give you my card. It will be a
17 conflict. Excuse me one minute, sir.

18 (Brief pause)

19 Q. In this letter to the Federal Marshal Craig,
20 am I correct that you ask that he contact a particular
21 Bronx ADA, a Ms. Villa?

22 A. Right.

23 Q. Where did you get that from?

24 A. Your client.

25 Q. He told you that the ADA on his case was a

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1 Ms. Villa?

2 A. I asked him because part of my practice when
3 I do research on cases, I go get the attorney's
4 digest.

5 Q. Yes.

6 A. And it gives the date that the attorney was
7 admitted to the bar, what percentage they came in in
8 their class, how long they been there.

9 I wanted to see that if there was a DA Bureau
10 Chief, how long they been there. That's it.

11 Q. Have you since come to realize that Ms.
12 Mattaway has been the personal DA since the date of the
13 arrest?

14 A. I guess so. Nobody told me otherwise.

15 Q. By any chance -- can't be. By any chance--
16 can't be.

17 You didn't come across the name and Villa
18 while reading the discovery from 1989, that can't be?

19 A. Absolutely not.

20 Q. I thought so. Thank you so much?

21 A. I didn't even have it.

22 Q. Thank you so much, sir. Best of luck in
23 Queens.

24 A. Thanks.

25 THE COURT: Anything further.

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1 MS. MATTAWAY: May I redirect?

2 REDIRECT EXAMINATION

3 BY MS. MATTAWAY:

4 Q. Mr. Morrissey, you said something like, maybe
5 I misheard you, something like you were at the seaside
6 or you were -- what was that?

7 A. Well, the last two weeks of August I was in
8 Seaside Heights New Jersey and I came back, I believe
9 it was right before Labor Day because I heard the
10 weather was gonna be a wash out. Labor day and we had
11 just gotten a new apartment in Guttenberg New Jersey
12 and it needed to be painted, so we came back early.
13 And I got arrested September 6th, so I guess that's
14 probably two days after Labor Day.

15 Q. And at the time you were arrested you were
16 arrested in New Jersey or New York?

17 A. Queens.

18 Q. In Queens?

19 A. Right.

20 Q. On or about August 31, 2006, were you even in
21 New York State?

22 A. No, I was in Jersey, Seaside Heights.

23 Q. And were you reading the newspapers, the New
24 York papers at that time?

25 A. No, I was reading the Toms River paper

Morrissey - People - Redirect

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1 because I was looking to buy a car with another bad
2 certified check down there.

3 Q. You remember that?

4 A. Yes. I wanted to pay for the vacation.

5 Q. Did you know anything about the arrest of
6 someone for the 1989 "Batman" homicide over Labor Day
7 weekend, 2006?

8 MR. BRUNO: Objection. Beyond the scope
9 of cross, your Honor.

10 THE COURT: Sustained.

11 Q. Did you know anything from the press about
12 Mr. Jimenez's arrest?

13 MR. BRUNO: Objection, beyond the
14 scope.

15 THE COURT: Sustained.

16 Q. Did you read any newspaper articles?

17 A. No.

18 Q. From New York at that time?

19 A. No.

20 MR. BRUNO: Objection, beyond the
21 scope.

22 THE COURT: He's answered it. Next
23 question.

24 Q. Did Mr. Jimenez show you any newspaper
25 articles in connection with his case?

Morrissey - People - Redirect

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1 A. No. Ms. Mattaway, I answered this no he
2 didn't.

3 Q. So he didn't show you anything written?

4 A. No.

5 Q. Did he tell you how he knows or how he
6 thought the ADA handling his case was someone named and
7 Villa?

8 MR. BRUNO: A fact not in evidence, your
9 Honor.

10 THE COURT: Sustained.

11 Q. Did he mention to you Anna Villa?

12 A. Yes.

13 MR. BRUNO: Fact not in evidence, your
14 Honor.

15 THE COURT: Overruled. The answer was
16 yes. Next question.

17 A. The answer was yes.

18 Q. Is that the person you were looking up?

19 A. I looked it up, but I couldn't find her.

20 Q. He gave you this name?

21 A. Right.

22 Q. And he told you this is a DA?

23 A. Right.

24 Q. What did he say to you? Who did he believe
25 she was?

Morrissey - People - Redirect

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1 A. The DA handling his case.

2 Q. Where did he get that information?

3 MR. BRUNO: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Did you ever read any newspaper article at
6 all since even August of 2006 about this case?

7 A. No.

8 MR. BRUNO: Objection, your Honor, not
9 elicited on cross.

10 THE COURT: Strike it. Next question.

11 Q. Right. How many times have I met with
12 you?

13 A. Twice.

14 Q. And what made you first decide to reach out
15 to Craig?

16 A. Based on the oral admissions, you know, I
17 felt it was the right thing to do and I wrote this
18 letter ten months ago. I didn't hear anything until
19 about a month ago.

20 Q. You were arrested September 6th, correct?

21 A. Right.

22 Q. How long after you were arrested did you meet
23 Mr. Jimenez and get handed the razor?

24 A. About three days afterwards I would say
25 approximately.

Morrissey - People - Redirect

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1 Q. And how many conversations into your
2 relationship was it before you wrote the letter?

3 A. It was when he was moved to Rikers Island and
4 he asked me to call his wife to say that he was moved
5 and he gotta go to the box for some kind of fight or
6 something like that.

7 MR. BRUNO: Objection, your Honor.

8 THE COURT: Sustained as to that last
9 answer. Strike it for the record.

10 Q. Do you recall approximately when the last
11 time you had contact with Mr. Jimenez was?

12 A. End of September, early October.

13 Q. Okay. Between September 6th, 2006, when you
14 were arrested and the end of September when you last
15 ever had contact with him, how many times did you meet
16 with him?

17 A. I saw him every day on the unit, you know,
18 constantly until he went to the barber shop to go to
19 work.

20 Q. And was there anything specific about what he
21 was saying, at one point you felt you needed to write
22 this letter?

23 MR. BRUNO: Objection, your Honor.

24 THE COURT: I'll allow that question.

25 A. Yeah, when he made reference to the kid that

Morrissey - People - Redirect

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1 it didn't matter.

2 Q. Why did that cause you to write this letter?

3 MR. BRUNO: Objection, beyond the scope
4 of cross, your Honor.

5 THE COURT: Sustained.

6 Q. Did Craig respond to you?

7 A. I responded to my attorney and said that he
8 got the stuff that I sent him to Brooklyn. I guess
9 it's their policy to give it to the U.S. Marshal
10 service in Brooklyn when something comes into Central
11 Islip and we didn't hear anything back and then they
12 send it back to him and he resubmitted I believe.

13 THE COURT: I'm striking his entire
14 response except for the portion that relates to
15 the answer to be yes.

16 Next question.

17 Q. What name, if you remember, did Mr. Jimenez
18 give you was his Irish attorney's name?

19 A. You know, I'm not really sure, but it sounded
20 Irish. It could have been Pat. It could have been
21 Brian. It sounded Irish.

22 Q. Okay. Now, you said something about it was
23 your policy to not look at documents because you could
24 be subpoenaed?

25 A. Right. I could be subpoenaed at a later

Morrissey - People - Redirect

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1 date.

2 MR. BRUNO: Objection.

3 THE COURT: The answer is yes. Next
4 question.

5 Q. That's what you said?

6 A. Yes.

7 Q. How do you know this?

8 A. Because I've been arrested many times and
9 I've been through the federal system, you know, where
10 the rule of law is tantamount.

11 MR. BRUNO: Objection. All irrelevant.

12 THE COURT: Sustained. Strike it. Next
13 question.

14 Q. Were you subpoenaed to be here today?

15 A. No.

16 Q. Are you hear voluntarily?

17 A. Voluntarily.

18 Q. What is 3500 material?

19 MR. BRUNO: Objection, your Honor.
20 Totally irrelevant.

21 THE COURT: Sustained. For the purpose
22 of the jury that reference refers to a legal
23 matter not your concern. It has nothing to do
24 with the facts of this case.

25 Q. You said that you previously cut deals, that

Morrissey - People - Redirect

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1 was your words, twice before?

2 A. I cooperated on two prior cases, yes.

3 Q. Have you ever testified in Supreme Court in
4 consideration for your testimony?

5 A. Never.

6 Q. This is the first time?

7 A. Yes.

8 Q. Okay. And what is the limit, or what is the
9 understanding of what if anything I will do for you in
10 exchange for you testifying?

11 MR. BRUNO: Asked and answered. A
12 strong letter to Queens.

13 THE COURT: Overruled.

14 A. I don't believe I said that.

15 MR. BRUNO: I paraphrased.

16 THE COURT: You don't get to make
17 comments or ask questions. You get to listen to
18 the question and answer it directly.

19 THE WITNESS: Okay.

20 THE COURT: I overruled the objection.
21 Why don't you repeat your question.

22 Q. Okay. What do you understand I might do for
23 you in exchange for testifying here today by what you
24 know?

25 A. Verbatim for my truthful testimony you'd make

Morrissey - People - Redirect

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1 a phone call and that was it.

2 Q. And what do you hope the outcome of my phone
3 call will be?

4 A. That the adjudication will be the same as the
5 other counties from one and a half to three.

6 Q. Did I make you any promises about how
7 successful that call can be?

8 A. No.

9 MS. MATTAWAY: Nothing further.

10 MR. BRUNO: May I.

11 THE COURT: Go ahead.

12 RECROSS EXAMINATION

13 BY MR. BRUNO:

14 Q. Did you not on cross examination when I
15 questioned you indicate in substance that you whatever
16 term, you cut a deal in hopes of helping to reduce your
17 own sentence?

18 A. Yes.

19 Q. And am I correct that on redirect meaning
20 when Ms. Mattaway gets up now you have a heart and you
21 were moved to come here because quote that kid didn't
22 matter; is that correct?

23 A. That's why I wrote the letter.

24 Q. So in other words, going to the next logical
25 step if I'm correct, Ms. Mattaway said I want you to

Morrissey - People - Redirect

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1 testify but I won't help in the Queens case, you would
2 have been here today, right?

3 A. I would have been here either way.

4 Q. You said you're here voluntarily today.
5 That's kind of a tricky approach meaning you're here
6 today, you wanted to testify to get a benefit, correct?

7 A. I hoped to get a benefit.

8 Q. But on the other hand the word voluntarily
9 bothers me. You were escorted in here by two
10 detectives employed by the DA's office in handcuffs and
11 legcuffs, right?

12 A. Yes.

13 Q. You're quasi voluntary. Your mind was
14 voluntary, your body wasn't.

15 MS. MATTAWAY: Objection.

16 THE COURT: Sustained.

17 Q. On these prior two occasions when you quote
18 unquote cooperated, you didn't testify, correct?

19 A. Correct.

20 Q. Now, I wasn't there but -- Am I correct you
21 didn't testify because the person heard you were
22 squealing so they copped out and pled guilty?

23 A. No, the person was caught on tape with marked
24 money with two hundred pounds of marijuana being
25 exchanged number one. The second case was America's

Morrissey - People - Redirect

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1 Most Wanted guy. I got no benefit for that, but he got
2 caught.

3 Q. So they didn't need you?

4 A. Probably not.

5 Q. Admittedly putting an altar boy spin on it,
6 Jimenez is the first one that called you out, tell your
7 story, you don't bother me, correct?

8 MS. MATTAWAY: I object.

9 THE COURT: Sustained.

10 MR. BRUNO: Nothing further.

11 THE COURT: Anything further?

12 MS. MATTAWAY: Yeah, I did.

13 REDIRECT EXAMINATION

14 BY MS. MATTAWAY:

15 Q. Mr. Morrissey, you said that you would be
16 here even if you weren't getting anything for your
17 testimony this morning, but are you if you get nothing,
18 are you in any different position than if you didn't
19 testify?

20 A. Position is the same. The offer is still the
21 same whether I testify or don't testify. I don't
22 believe Queens even knows about this.

23 MS. MATTAWAY: Okay. I have nothing
24 further.

25 MR. BRUNO: May I?

Morrissey - People - Redirect

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1 THE COURT: Yes.

2 Q. You tell me there is no difference what offer
3 is on the table right now in Queens two to six, three
4 to nine?

5 A. Three and a half to seven.

6 Q. That's not a difference though?

7 A. It's gonna be that's the offer right now.
8 They don't even know about this.

9 Q. In other words, if this works out, you'll be
10 out very soon on time served. If it doesn't work out
11 you're stuck in two and a half years more?

12 A. Right.

13 Q. You're a practical man. That's no
14 difference. You'll do it standing on your head.

15 MS. MATTAWAY: Objection.

16 THE COURT: Sustained. Do not answer
17 that question. Anything further?

18 MS. MATTAWAY: No sir. Thank you.
19 Thank you.

20 THE COURT: We're gonna break for lunch
21 now. I want to remind you there was a reference
22 to the words truthful, whether any testimony or
23 any evidence is credible or not credible, truthful
24 or not truthful is a determination for the jury
25 and only the jury should make. No one else.

Morrissey -People-Recross

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1 Return to this courtroom. It's a little
2 after 1. I apologize. Return to this courtroom
3 at 2:20. Do not discuss the case among
4 yourselves.

5 Do not allow anyone to discuss the case with
6 you. Keep an open mind. Enjoy your lunch. I'll
7 see you back here at 2:20.

8 (Whereupon, a luncheon recess is taken)

9 AFTERNOON SESSION

10 THE COURT CLERK: Case on trial
11 continues. People of the State of New York
12 against Jimenez.

13 THE COURT: Anything I need to address
14 before we proceed? Bring the jury out.

15 (Jurors enter)

16 THE COURT CLERK: Jurors are present and
17 properly seated.

18 THE COURT: Good afternoon. I hope you
19 all have a good lunch. Now, proceed. You may
20 call your next witness.

21 MS. MATTAWAY: Thank you. The People
22 call Detective Victoria Burton.

23 DETECTIVE, VICTORIA BURTON, a witness called on behalf
24 of the People of the State of New York, is duly
25 sworn and testifies as follows:

Morrissey -People-Recross

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1 COURT OFFICER: Give your first and last
2 name. Spell your last name, your shield number,
3 and command.

4 THE WITNESS: Victoria Burton
5 B-U-R-T-O-N, shield 667, Crime Scene Unit.

6 THE COURT: Good afternoon.

7 THE WITNESS: Hello.

8 THE COURT: You may inquire.

9 MS. MATTAWAY: Thank you.

10 DIRECT EXAMINATION

11 BY MS. MATTAWAY:

12 Q. Good afternoon, Detective.

13 A. Good afternoon.

14 Q. How long have you been a member of the New
15 York City Police Department?

16 A. For 16 and a half years.

17 Q. And what is your present assignment?

18 A. I am a detective in the crime scene unit.

19 Q. How long have you been doing that?

20 A. For 13 years.

21 Q. What are your duties as a detective in the
22 crime scene unit?

23 A. As a detective in the crime scene unit, I
24 respond to the scenes of all homicides, all felonious
25 assaults, where the victim is so seriously injured that

Det. Burton - People - Direct

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1 they are likely to die. All department of
2 investigations, that's a job where police officer is
3 involved and any other crime where members of the crime
4 scene unit expertise may aid a detective in a precinct.

5 Q. What did you do prior to joining the Crime
6 Scene Unit?

7 A. I was on patrol in the 112th Precinct.

8 Q. Now, regarding your duties in the Crime Scene
9 Unit, what does a Crime Scene Unit detective do when
10 she responds to a homicide scene?

11 A. When we respond to any crime scene we search
12 for evidence. When that evidence is found it's
13 collected. We record the evidence that is found and
14 identifying mark is put on that evidence so it could
15 later be identified in court and we record the scene by
16 means of photography and notes and also a sketch and we
17 also package evidence.

18 Q. Okay. When were you notified to come testify
19 here for trial today?

20 A. I believe it was yesterday.

21 Q. And are you familiar with the case that
22 you're testifying about?

23 A. Only because I looked at the notes.

24 Q. All right. Do you know the dates of the
25 incident that you're testifying about today?

Det. Burton - People - Direct 78

1 A. Yes.

2 Q. What date was it?

3 A. July 3, 1989.

4 Q. Were you the crime scene unit, Detective,
5 assigned to this case on July 3, 1989?

6 A. No.

7 Q. Do you know who that detective was?

8 A. Detective Goodwin and Detective Honeyman.

9 Q. Where, if you know, are Detective Goodwin and
10 Detective Honeyman now?

11 A. They've both retired.

12 Q. Okay. Is it part of your duties as a present
13 member of the crime scene unit to interpret the crime
14 scene unit reports of retired detectives and testify
15 about them?

16 A. Yes.

17 Q. Have you done that before?

18 A. Yes.

19 Q. Okay. Have you brought with you to court
20 today a copy of the original 1989 crime scene unit
21 report that relates to this incident?

22 A. Yes, I have.

23 Q. Okay. And can you tell us based on your
24 reading of the report what did Detective Goodwin and
25 Honeyman do on July 3rd, 1989 in connection with this

Det. Burton - People - Direct

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1 case?

2 A. Okay. Detective Goodwin and Honeyman
3 responded to the scene. They took photographs of the
4 scene. They also recovered evidence, ballistic's
5 evidence which would be firearms and anything related
6 to firearms and they did a sketch of the scene.

7 Q. Do you have in your crime scene report a note
8 as to what time they got to the scene on July 3rd,
9 1989?

10 A. They responded at 1:05 in the morning.

11 Q. And where exactly did they respond to?

12 A. May I refer to the notes?

13 THE COURT: You may refresh your
14 recollection.

15 A. They responded to the Whitestone movie
16 theater at 2505 Bruckner Boulevard.

17 Q. You said something about a sketch. Do you
18 have the sketch with you that the crime scene
19 detectives made on July 3rd, 1989?

20 A. Yes, I do.

21 Q. Did you also get a chance to take a look at
22 the photographs that were taken in 1989?

23 A. Yes.

24 Q. Okay. What can you tell us about the
25 photographs that were taken?

Det. Burton - People - Direct

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1 A. The photographs were views of the movie
2 theater. There were thirteen photographs taken, but
3 five photographs were able to be sent to you because
4 there was a camera malfunction. So there were five
5 photographs of the movie theater.

6 MS. MATTAWAY: Okay. At this time I'd
7 like to have these documents or these items marked
8 as People's 1A through E.

9 (Whereupon, four documents are marked as
10 People's 1a through 1d for identification by the
11 reporter)

12 COURT OFFICER: People's 1A through E
13 marked for identification.

14 MS. MATTAWAY: Please show them to the
15 witness.

16 Q. Detective Burton, please take a look at
17 People's 1A through D. Do you know what they are?

18 A. Yes.

19 Q. What are they?

20 A. These are the photographs that Detective
21 Goodwin took of the scene at 2505 Bruckner.

22 Q. How do you know that what you're holding in
23 court as People's 1A through E are the photographs
24 taken back on July 3, 1989?

25 A. On the rear of the photograph is the sticker

Det. Burton - People - Direct 81

1 and we still use the same sticker with the exception
2 it's now a different color that we use to document our
3 photographs in our units.

4 MS. MATTAWAY: I offer them as People's
5 1A through E.

6 THE COURT: Show them to counsel.

7 MS. MATTAWAY: One moment please. I
8 apologize. This is E.

9 MR. BRUNO: I guess for a moment. I'm
10 sorry.

11 Can we approach, your Honor.

12 THE COURT: Step up.

13 (Whereupon, a discussion is held off the
14 record between the court and all counsel)

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1 MR. BRUNO: Your Honor, at this time I
2 have no objection to photographs which are currently
3 labelled 1-A through D inclusive.

4 THE COURT: People's 1-A through D will be
5 in evidence. Mark it, please.

6 (Whereupon, People's Exhibit Numbers
7 1-A through 1-D, photographs, were received in
8 evidence and marked.)

9 THE COURT OFFICER: 1-A through D marked
10 in evidence.

11 THE COURT: Members of the jury, what the
12 witness identified, the photographs, she only
13 identified A through D. We haven't dealt with the
14 other photographs at this time.

15 You may ask the next question.

16 MS. MATTAWAY: Yes.

17 Q. Can you please tell us what evidence, if any,
18 was noted as recovered or observed by the Crime Scene Unit
19 detectives on July 3, 1989?

20 A. Yes. Detective Goodman recovered and noted a
21 discharged shell, a lead bullet, a firearm and four --
22 excuse me -- three cartridges and an additional discharged
23 shell.

24 Q. Are the locations of any of these items of
25 evidence noted on the Crime Scene Unit report?

1 A. Yes. One of the discharged shells was
2 recovered on the right side of the theater 16 rows down,
3 and one lead bullet was recovered on the left side of the
4 theater four rows down.

5 Q. Is a location of recovery noted for any other
6 items of evidence?

7 A. No.

8 Q. Okay.

9 Now, again, drawing your attention back to
10 People's 1-A through D which are now in evidence, do you
11 still have those?

12 A. Yes.

13 Q. Can you please tell them what Detective Goodwin
14 noted they represented?

15 A. Yes.

16 Q. And please tell us which item refers to what
17 you're talking about.

18 A. Item 1-C is a photograph, a view from the
19 entrance towards hall entrance number 2.

20 People's Exhibit 1-D is a photograph view from
21 the entrance towards hall entrance 1.

22 Exhibit 1-A is a photograph view from rear
23 towards front showing deceased.

24 Exhibit 1-B is a photograph, a view from front
25 towards rear showing deceased.

1 Q. Okay. Now, back to the gun and ballistics
2 evidence for a moment, please.

3 Did the Crime Scene detective note if he
4 received any evidence from anyone else from the police
5 force?

6 A. Yes.

7 Q. What is it that was noted?

8 A. He noted that he recovered the firearm and the
9 ballistic items from inside of the firearm which were three
10 cartridges and discharged shell were recovered by an
11 off-duty member of the service, Police Officer Velazquez.

12 Q. Okay. Have you had training and experience in
13 ballistics and firearms?

14 A. A limited amount, yes.

15 Q. Okay. Are you able to tell us what a shell
16 casing is, what a cartridge is? Can you explain that to us
17 based on what was found by the Crime Scene detectives?

18 A. Yes.

19 Q. Okay.

20 A. When people look at a bullet, they see one
21 whole piece. It is one piece as a bullet, but it needs to
22 be thought of as two separate pieces. You have a
23 discharged shell; and sitting on top and inside of the
24 discharged shell, you have the actual projectile which is
25 known as the bullet.

1 So when a trigger is pulled and it sets the
2 explosion into motion where you're going to fire this
3 ballistic item, the projectile leaves the firearm through
4 the muzzle and it goes on to its intended target, and the
5 discharged shell actually stays in the vicinity of the
6 shooter.

7 So, this is a revolver; it stays in the
8 cylinder. And for an automatic firearm and a
9 semiautomatic, it ejects out of the gun, but it stays in
10 the vicinity of the shooter.

11 Q. Okay.

12 So, can you again then now address your
13 knowledge towards what was recovered and tell us what
14 pieces of a bullet or what was recovered now that we know
15 what it is?

16 A. Okay. One discharged shell, .45 caliber
17 automatic Winchester brand center fire discharged shell was
18 recovered on the right side of the theater 16 rows down.
19 One lead bullet was recovered on the left side of the
20 theater four rows down. One firearm was recovered, and
21 inside of that firearm was three cartridges and one
22 discharged shell.

23 Q. What is a cartridge?

24 A. A cartridge is the actual -- the whole bullet,
25 the projectile and the discharged shell together.

1 Q. Those cartridges that were in the gun, do you
2 have any indication whether or not they could work or they
3 had been used? Can you tell from this?

4 A. Not from this report.

5 Q. Okay.

6 A. No.

7 Q. All right. I would like to address your
8 attention to the second page of the Crime Scene Unit
9 report.

10 Did Detective Goodwin indicate anything about
11 the deceased's condition or appearance?

12 A. Yes. He indicated that the deceased had a
13 bullet wound to the head, the front of the head.

14 Q. Okay. And was there anything about the
15 deceased's clothing noted?

16 A. Yes. He notes he was wearing white shorts, a
17 shirt and sneakers.

18 Q. And, finally, directing your attention to the
19 last page of the Crime Scene Unit report, are you able to
20 tell us what that is?

21 A. This is a sketch of the interior of the theater
22 where he depicts the center rows and the aisles on both
23 sides of the center rows and the left rows and the right
24 rows and also where the screen would be, and he also notes
25 that the sketch is not to scale.

cm/d Det. Burton - for People - Cross

1 Q. At this time I ask you if you can remove the
2 final page from your crime scene report, and I offer that
3 as People's 2.

4 THE COURT: Show it to counsel.

5 MR. BRUNO: If it please the Court, I have
6 reviewed that document. I have no objection to its
7 receipt directly in evidence.

8 THE COURT: This will be People's 2 in
9 evidence.

10 (Whereupon, People's Exhibit Number
11 2, final page of Crime Scene Unit report, was
12 received in evidence and marked.)

13 MS. MATTAWAY: Thank you. Nothing
14 further.

15 MR. BRUNO: May I proceed?

16 THE COURT: You may inquire.

17 CROSS-EXAMINATION

18 BY MR. BRUNO:

19 Q. Good afternoon, Detective.

20 A. Hello.

21 Q. Let me just ask you for a little more
22 information about the ballistics evidence that was
23 recovered. Okay?

24 You've given us some decent outline about a
25 cartridge or a round. Am I correct the word "round" can be

1 used interchangeably?

2 A. Not really. It's not really accurate.

3 Q. All right.

4 So, the cartridge, I'm sorry to belabor it, the
5 cartridge, for example, would be the entire item that one
6 would buy in the gun store to then use in the gun?

7 A. Correct.

8 Q. And this cartridge would consist of a metal --
9 one moment, please -- would include a metal shell which is
10 sometimes a silver color, sometimes a gold color, correct?

11 A. Correct.

12 Q. So, it would include the shell. At the back of
13 the shell would be like the firing cap. It looks like a
14 little, shiny circle, correct?

15 A. Primer.

16 Q. And then at the front of the shell, of course
17 forced in at the factory, what is more properly called the
18 bullet?

19 A. Correct.

20 Q. Now, with reference to bullets, meaning the
21 projectile that is forced out of the gun when it's fired,
22 with reference to bullets, am I correct that a revolver,
23 amongst others, can properly use a lead bullet?

24 A. Yes, it can.

25 Q. And, again, because it's a fine point, meaning

1 a lead bullet within further covering, correct?

2 A. Yes, that's correct.

3 Q. And, of course, as another option for a
4 revolver, the bullets then may be jacketed or may not be
5 jacketed, correct?

6 A. Correct.

7 Q. And I'll get back to that.

8 With reference to automatic or semiautomatic,
9 am I correct that the cartridge would have the same
10 components?

11 A. Correct.

12 Q. Shell, bullet, primer; correct?

13 A. Yes.

14 Q. However, am I correct that but for rare
15 exceptions, in a semiautomatic handgun the bullet would
16 have a jacket?

17 A. You would have to speak to a ballistics expert.
18 I can only speak of in my experience.

19 Q. Well, on direct you indicated that you had some
20 working knowledge of ballistics; am I correct?

21 A. I said limited.

22 Q. Limited, okay.

23 Let me approach it this way: Am I correct that
24 early on in your career the authorized weapon, the weapon
25 you would have carried at least on duty, would have been a

1 revolver?

2 A. That's correct.

3 Q. That was the classic policeman's gun. You had
4 the cylinder, correct?

5 A. Correct.

6 Q. And the cylinder was that round item you saw
7 like projecting from the side of the gun with generally six
8 holes for six rounds, correct?

9 A. Yes.

10 Q. And then in recent years the police department
11 transferred or, forgive me, converted to carrying a 9
12 millimeter semiautomatic weapon; is that correct?

13 A. Yes.

14 Q. Now, am I correct that back when you carried
15 your service revolver, it would have been a .38 Special,
16 correct?

17 A. Yes.

18 Q. Back when you carried your .38 Special, the
19 authorized round was a cartridge with a lead bullet, am I
20 correct?

21 A. Yes.

22 Q. Am I correct that now that you carry a 9
23 millimeter semiautomatic, you must use jacketed rounds; am
24 I correct?

25 A. Yes.

1 Q. And for the jury's edification, am I correct
2 that the reference to the jacket is that you could modify
3 it, the head of the bullet, over the head is still another
4 thick layer of generally brass or copper; am I correct?

5 A. Generally, yes.

6 Q. And am I correct that the reason that it's
7 required to have a jacketed round in a semiautomatic is to
8 avoid jamming or clogging; am I correct?

9 A. No. Actually, the copper jacketing gives
10 rigidity to the lead because the lead is very soft.

11 Q. That's correct. I skipped a step. Thank you.

12 Am I correct that as part of the function of
13 firing a semiautomatic handgun, the slide slides back,
14 pushes a round into place and it's then fired; am I
15 correct?

16 A. Yes.

17 Q. Am I correct that during the process of firing,
18 great heat is generated?

19 A. Correct.

20 Q. Am I correct that because of the great heat
21 that's generated, but for the copper or brass jacket, the
22 lead would actually get soft to a point of not melting but
23 would get soft enough that it could jam the slide and
24 prohibit the proper firing of the firearm?

25 MS. MATTAWAY: I object.

1 THE COURT: Overruled.

2 If she knows, she can answer.

3 Q. Am I correct?

4 A. You would have to check with a ballistics
5 expert. I don't know.

6 Q. Having the limited background you just gave us,
7 am I correct that the .45 caliber automatic shell that was
8 found would have probably been ejected from a .45 automatic
9 handgun?

10 A. Not necessarily.

11 Q. Okay.

12 Am I correct this would have been fired from
13 some weapon that could accommodate .45 caliber automatic
14 rounds?

15 A. That's correct.

16 Q. And for the jury's edification, for example,
17 the legendary Thompson submachine gun fired .45 caliber
18 semiautomatic rounds; am I correct?

19 MS. MATTAWAY: Objection.

20 THE COURT: If she knows, she can answer.

21 A. I don't know.

22 Q. You don't know. Okay.

23 In any event, moving on to Item 2, the lead
24 bullet that was recovered from the left side of the
25 theater, would it not be quite likely or you're a little

1 sketchy on that, the lead bullet that's recovered, is it
2 not -- you pick a word -- correct me in case -- quite
3 likely that it was not fired from a semiautomatic --

4 MS. MATTAWAY: I object.

5 Q. -- because of the lack of a jacket?

6 THE COURT: Can I hear the question again?

7 Q. Item number 2 is a lead bullet recovered from
8 the left side of the theater. Hearing that it's a lead
9 bullet, is it not now quite likely -- and you could modify
10 that word "quite likely" -- that that round, that bullet,
11 did not come from a semiautomatic weapon?

12 THE COURT: Objection overruled.

13 If she knows, she can answer.

14 A. Can you repeat it again, please?

15 Q. Item number 2 that's recovered and noted is a
16 lead bullet recovered from the left side of the theater?

17 A. Right.

18 Q. Is it not most likely that that lead bullet was
19 not fired from a semiautomatic gun because of the lack of a
20 jacket?

21 A. That is not a true statement.

22 Q. Why is it not? Tell me.

23 A. It's not a true statement because a lot of
24 times the copper jacketing will separate from the bullet
25 and they are not near each other.

1 Q. You weren't there, but during the search of the
2 premises by Officers Goodwin and Honeyman, was a separated
3 copper jacket recovered?

4 A. There is no indication of one.

5 Q. Thank you.

6 Now, with reference to the third item, the
7 third item recovered is a Smith and Wesson four-inch barrel
8 .38 Special revolver; is that correct?

9 A. Yes.

10 Q. Am I correct that within that revolver as
11 recovered would have been the following: One .38 Special
12 round with a lead bullet, as it were; is that correct?

13 A. Yes.

14 Q. Then there was another lead semi-wadcutter
15 bullet -- withdrawn.

16 There is another round, meaning unfired, with a
17 lead semi-wadcutter bullet; is that correct?

18 A. Yes.

19 Q. Again, for the jury's edification, am I correct
20 that a semi-wadcutter is a flat-nosed bullet as opposed to
21 a round-nosed bullet?

22 A. Yes.

23 Q. Now, the third round recovered in that revolver
24 is another .38 Special semi-wadcutter round or cartridge,
25 meaning unfired?

1 A. Yes.

2 Q. So, there are three unfired rounds in that .38
3 Special?

4 A. Correct.

5 Q. One round nose, two flat nose in layman's
6 terms, correct?

7 A. Correct.

8 Q. Now, the fourth item found in that .38 Special
9 is a .38 Special discharged shell; am I correct?

10 A. Yes.

11 Q. So that would be an indication that at some
12 point a round was fired from that gun and the bullet
13 discharged, correct?

14 A. No. It just means there is a discharged shell
15 in the firearm. It doesn't mean it was fired.

16 Q. All right.

17 Now, not saying or implying that everyone would
18 have the same level of maintenance and concern as a police
19 officer, but am I correct that you would not leave a
20 discharged shell in your gun? You would reload?

21 MS. MATTAWAY: I object.

22 THE COURT: Sustained.

23 Q. What is your practice? Would you be walking
24 around with a discharged shell in your weapon?

25 MS. MATTAWAY: I object.

1 THE COURT: Sustained.

2 Q. Am I correct that it was further noted that
3 there was evidence of discharge in all six chambers; am I
4 correct?

5 A. Yes.

6 Q. Although you cannot say with any certainty nor
7 can I ask you nor can I phrase it as a question of
8 certainty, would not one logical conclusion be that Item
9 Number 2, the left bullet, would have been discharged from
10 the discharged shell in the .38 Special?

11 MS. MATTAWAY: I object.

12 THE COURT: Sustained.

13 Q. All right. Let's take it even more basically.
14 Am I correct that one of the -- the last listed
15 item that's in the recovered .38 Special is, in layman's
16 terms, an empty shell?

17 A. Correct.

18 Q. Meaning a shell lacking a bullet?

19 A. Correct.

20 Q. It says "discharged," so that would also imply
21 that the primer had been utilized; is that correct?

22 A. Yes.

23 Q. By the way, when the primer is utilized, you
24 see a dent in it?

25 A. Yes.

1 Q. The dent is caused by the firing pin?

2 A. Yes.

3 Q. Now, we have a discharged shell that had been
4 struck by a firing pin in Item 4, and in Item 2 we have a
5 lead bullet that was fired from something, correct?

6 A. That's correct.

7 Q. Would it not be one logical possibility that
8 the recovered lead bullet could have been discharged from
9 that discharged .38 Special shell?

10 MS. MATTAWAY: I object.

11 THE COURT: Sustained.

12 Q. Now, finally -- withdrawn.

13 Finally, there is at least circumstantial
14 indication, I won't say evidence, circumstantial indication
15 that present in that theater that day -- well, withdrawn.

16 There is actual evidence that present in that
17 theater that day was a .38 Special revolver loaded with at
18 least three live rounds, correct?

19 A. That's correct.

20 Q. And there probably was present some other
21 weapon that could have discharged a .45 caliber shell?

22 A. No, that's not a fair statement.

23 Q. I see where you're going.

24 In other words, someone may have come to the
25 theater and dropped an empty .45 caliber shell on the

1 floor?

2 A. It's possible.

3 Q. I see.

4 Ma'am, I mean no disrespect, but just go over
5 the testimony in your head, direct and cross. Is it not a
6 fair statement that you were just a sufficient enough
7 ballistics expert to satisfy the A.D.A., but you just ran
8 short on my key points? Is that a fair statement?

9 MS. MATTAWAY: I object.

10 THE COURT: Sustained.

11 Q. Again, when you carried a .38 Special early in
12 your career, you had lead bullets, no jacket, correct?

13 A. Actually, it did have a jacket. It didn't have
14 a copper jacket. It had Nyclad coating, so it wasn't just
15 a lead bullet.

16 Q. A coating?

17 A. Right.

18 Q. Is not the coating there to avoid spraying,
19 meaning less chance of ricocheting and hitting citizens by
20 a police officer?

21 A. In a .38?

22 Q. .38 Special.

23 A. I don't know.

24 Q. You don't know. See, just short. Just short.

25 THE COURT: Sustained.

1 MS. MATTAWAY: I object.

2 Q. You carry a 9 millimeter Glock?

3 A. Yes.

4 Q. Am I correct in your 9 millimeter Glock which
5 is now the authorized weapon you do have a jacketed round;
6 am I correct?

7 MS. MATTAWAY: I object.

8 THE COURT: Overruled. You can answer.

9 Q. Don't say you don't know.

10 A. I'm not. I'm going to answer.

11 Q. Please do.

12 A. Yes, it does have a copper jacketing.

13 MR. BRUNO: Thanks so much. Nothing
14 further.

15 THE COURT: Anything further?

16 MS. MATTAWAY: Yes. I have a brief
17 redirect.

18 REDIRECT EXAMINATION

19 BY MS. MATTAWAY:

20 Q. Detective Burton, with respect to defense
21 counsel's question to you about the note by Detective
22 Goodwin in the report that there was evidence of discharge
23 present in all chambers, do you have any note as to when
24 those rounds were discharged that put the evidence in the
25 chambers?

1 A. No.

2 Q. Are you able to tell us if the three unfired
3 rounds that were found in the gun, I mean could they leave
4 discharge?

5 A. Just by being in the firearm?

6 Q. Right.

7 A. No.

8 Q. Okay.

9 Is there any way, if you know, how to tell how
10 long ago or how far before in time a round was fired in
11 order to have evidence of discharge present?

12 A. No.

13 MS. MATTAWAY: Nothing further.

14 RECROSS-EXAMINATION

15 BY MR. BRUNO:

16 Q. Incidentally, now that you have testified, the
17 .38 Special ends up being recovered by an off-duty cop who
18 was a patron of the theater; am I correct?

19 MS. MATTAWAY: Objection.

20 THE COURT: Overruled.

21 You can answer that, if you know.

22 A. Yes.

23 Q. You, of course, have no indication from where
24 it's recovered?

25 A. Not in Detective Goodwin's notes, no.

1 Q. Have you any personnel knowledge?

2 A. No.

3 MR. BRUNO: Thank you.

4 MS. MATTAWAY: Nothing further.

5 THE COURT: You may step down. Thank you,
6 Detective. Have a good day.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness was excused.)

9 THE COURT: You may call your next
10 witness.

11 MS. MATTAWAY: The People call Mike
12 Centeno.

13 THE COURT OFFICER: Raise your right hand,
14 left hand on the Bible, face that gentleman over
15 there.

16 THE COURT CLERK: Do you solemnly swear
17 the evidence you give to this court and jury will be
18 the truth, the whole truth and nothing but the truth,
19 so help you God?

20 THE WITNESS: Yes, I do.

21 THE COURT OFFICER: Have a seat. Please
22 give your first and last name, spell your last name
23 and the county you reside in.

24 THE WITNESS: My name is Mike Centeno,
25 C-E-N-T-E-N-O, and I live in Middlesex County, New

1 Jersey.

2 THE COURT: Good afternoon. You may
3 inquire.

4 MS. MATTAWAY: Thank you.

5 M I K E C E N T E N O, resident of Middlesex County, New
6 Jersey, having been first duly sworn, testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. MATTAWAY:

10 Q. Good afternoon, Mr. Centeno.

11 A. Good afternoon.

12 Q. I'm going to stand back here, and I hope that I
13 can hear you from back here. Please keep your voice up.
14 Okay?

15 A. Yes.

16 Q. Speak into the microphone.
17 How old are you, sir?

18 A. Forty-four.

19 Q. I would like to direct your attention to July
20 3, 1989.

21 How old were you back then, about?

22 A. Early twenties.

23 Q. Okay. And do you recall if you were working
24 back then?

25 A. Yes, I was.

cm/d Mike Centeno - for People - Direct

1 Q. And what was your job back then?

2 A. My part-time job or my regular job?

3 Q. Did you have two jobs?

4 A. Yes, I did.

5 Q. Tell us what you did.

6 A. I worked for Prudential Securities at the time,
7 a brokerage firm on Wall Street.

8 Q. Was that your full-time job?

9 A. That was my full-time job.

10 Q. And what was your part-time job?

11 A. I was moonlighting as a security guard at the
12 movie theater.

13 Q. Which movie theater?

14 A. Whitestone Cinemas in the Bronx.

15 Q. What were your duties as a part-time security
16 guard at the Whitestone Cinemas?

17 A. I would stand guard by the ticket booth. We
18 would make sure that if any guys got rowdy, we would break
19 it up, patrol the theaters, make sure no one is sneaking in
20 through the back doors, that type of stuff.

21 Q. How many security guards were on duty at that
22 time?

23 A. I believe about eight or ten. I'm not sure,
24 about ten.

25 Q. Were the security guards at the Whitestone

1 theater armed at that time?

2 A. Yes. There were eight armed and two unarmed
3 security guards, me being one of the unarmed security
4 guards.

5 Q. And did you have any kind of uniform or
6 something you wore?

7 A. Yeah. We wore gray slacks, blue Blazer and a
8 security guard pin.

9 Q. Apart from the weapon -- you were one of the
10 unarmed ones?

11 A. Yes, I was.

12 Q. Apart from the weapon, what other equipment, if
13 any, did you have?

14 A. We had a pair of handcuffs and that was it. We
15 didn't have anything. That was it.

16 Q. Do you recall if you had any radios?

17 A. Oh, I'm sorry. Yes, we had the walkie-talkies.

18 Q. And did you have a specific area of the theater
19 you were supposed to patrol or anything like that?

20 A. That night I was assigned to the ticket booth
21 in the front.

22 Q. Is there a reason why you were assigned to the
23 ticket booth in the front?

24 A. No reason. I was the rookie, so they always
25 put us at the ticket booths in the front to make sure

1 nobody is skipping on line and there is no hassles, the
2 clerks aren't given any hassles, anybody screaming or
3 cursing and that type of stuff at them.

4 Q. And you say this booth was in the front?

5 A. Yeah, to the right. When you walked into the
6 theater, it was immediately to the left when you walked in
7 of the front doors.

8 Q. Immediately to the left of the front doors?

9 A. Right. You walked in and the ticket booth was
10 to the left.

11 Q. Are you able to tell us, if you remember, where
12 the concession stand was in relation to where the ticket
13 booth was?

14 A. The concession stand was right in the middle of
15 the lobby. I mean, you walked in and the concession stand
16 was like 30 feet in and took up a good part of the lobby.

17 Q. And then can you tell us what lay ahead of you
18 beyond the concession stand if you were to walk into the
19 Whitestone Cinemas?

20 A. There were theaters right behind the concession
21 stands.

22 Q. How many theaters? Do you remember?

23 A. It should be two. I believe it was Theaters 5
24 and 6. Yeah.

25 Q. Do you remember which theater was to which

1 direction?

2 A. 5 was to the left when you walked in; 6 was to
3 the right when you walked in of the concession stand.

4 Q. And how many theaters in all?

5 A. I want to say ten or, I believe, twelve
6 theaters, I believe.

7 Q. All right. I'm sorry. What?

8 A. Ten or twelve.

9 Q. Are you able to tell us, if you remember, where
10 Theater 1 was?

11 A. Yes. Theater 1 was, you walked into the front,
12 you went past the concession stand to the left all the way
13 down the corridor, at the end of the corridor. It was one
14 of the big theaters.

15 (Continued on the next page.)

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1 Q. When you say big, what do you mean?

2 A. Well, it sat over two hundred fifty people.
3 It had three sets of rows of seats in it.

4 Q. Do you remember what movie was playing in
5 Theater One on July 3, 1989?

6 A. Batman premiered just came out that week.

7 Q. Okay. One moment please.

8 MS. MATTAWAY: I would like to have
9 this item marked People's A through D.

10 (Whereupon, the court reporter marks
11 People's Exhibit numbers 3A through 3D for
12 identification, as directed by the Court.)

13 Q. Mr. Centeno, can you look at what's been
14 marked as People's 3A through D. Do you recognize
15 what's in those photos?

16 A. Yeah, the movie theater, the concession
17 stand, the front doors, a door to one of the movie
18 theaters and the corridor leading to Theater One.

19 Q. And is the way the photos appear here in
20 court today a fair and accurate representation of the
21 way the area around the concession stand and the
22 hallway to the Theater One and the entrance look like?

23 A. Yes, very much.

24 MS. MATTAWAY: I offer it as People's A
25 through D.

1 THE COURT: Show it to counsel.

2 MR. BRUNO: May I voir dire?

3 THE COURT: Go right ahead.

4 VOIR DIRE EXAMINATION

5 BY MR. BRUNO:

6 Q. Mr. Centeno, you told us that these
7 pictures basically depict the layout of the theater?

8 A. Correct.

9 Q. Or major parts of it?

10 A. The concession stand, the movie theater,
11 the corridor leading to theaters one through five and
12 the front doors.

13 Q. My question is in terms of decor and so
14 forth?

15 A. Yes.

16 Q. The only difference from 89 would be
17 carpeting, painting?

18 A. Yeah, I'm looking at overall set up of the
19 theater, nothing's changed.

20 Q. So, in other words, the physical layout is
21 the same. They may have re-decorated a few times?

22 A. They might of. I don't remember the carpet
23 on the floor 18 years ago.

24 Q. Have you been there in recent history, when
25 you say that's the layout of the theater?

ECgm

Voir Dire by Mr. Bruno

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1 A. No, I have not.

2 Q. So then you're basically saying that this
3 looks like the theater layout as best you recollect it
4 back in 89?

5 A. Spot on. Pretty much, yeah, same set up.

6 Q. So the set up is the same. You do
7 acknowledge that the decor is changed?

8 A. It could've. I'm not, I can't be a hundred
9 percent sure. The colors look the same. The carpet,
10 I don't know if it's the same from 18 years ago.
11 Pretty much it's still the same dingy theater. It was
12 18 years ago when I was there.

13 Q. I was there when it was a drive-in. I'm
14 very old. All right. All right.

15 Is it the bottom line that you're saying this is
16 the interior of the theater because, you know, you're
17 here for a case that involves that theater?

18 A. No, this is the theater. This is where I
19 worked for six months.

20 Q. So the decor is changed probably five or
21 six times since you left there?

22 MS. MATTAWAY: I object.

23 MR. BRUNO: I have no objection, your
24 Honor, but I think the record speaks for itself.
25 No objection.

1 THE COURT: People's 3A through D in
2 evidence.

3 (Whereupon, the court reporter marks
4 People's Exhibit number 3A through 3D, as
5 directed by the Court.)

6 MS. MATTAWAY: May I ask the court
7 officer if we can bring the easel over near the
8 witness.

9 COURT OFFICER: Where the jury can see
10 it?

11 MS. MATTAWAY: Yes, please.

12 Q. All right. Now, let me address my question
13 back to that point in time when you say you were at
14 the front ticket booth on this date?

15 A. Yes.

16 Q. Okay. Do you remember what time you
17 started your shift that night?

18 A. About say seven o'clock.

19 Q. In the evening?

20 A. Yes, because I would get home from work and
21 then go to the second job.

22 Q. So was this, would it be fair to say it's
23 technically July 2nd because it's before midnight?

24 A. Yes.

25 Q. So around July 2nd, 7 p.m. you started?

1 A. Yeah, right.

2 Q. And let me take you now to sometime close
3 to midnight. Did anything happen at the theater that
4 night?

5 A. I observed an argument from afar, from
6 where I was standing by the ticket booth.

7 Q. Tell us about that.

8 A. There was two gentlemen, don't know why
9 they were arguing but they were at the concession
10 stand. I just figured the other security guards were
11 there. They would handle it.

12 Q. Were you and the other security guards in
13 the vicinity of the concession stand?

14 A. They were on the other side of the
15 concession stand because that's usually where we stand
16 when they're not on duty patrolling.

17 Q. Can I ask you if you can approach People's
18 3A through D and show us what you mean when you say
19 they were on the other side, if you can?

20 A. They would be behind this concession stand
21 right directly behind, against the wall.

22 Q. Which photograph is that, sir?

23 A. This is People's B.

24 THE COURT: Indicating to the extreme
25 right-hand side of that photograph.

1 MS. MATTAWAY: All right.

2 Q. And, what, if anything do you remember
3 about the people who were in the argument?

4 A. There was two gentlemen, a gentleman and a
5 girl from what I saw, from where I was stationed.

6 Q. Okay. Are you saying it's two gentlemen
7 versus a gentlemen and a girl or something else?

8 A. Well, I saw one gentleman, black gentleman,
9 a little heavy-set chubby cheeks. I got a diagonal
10 look at him from where I was standing.

11 Q. What was he wearing?

12 A. White shorts; his shirt was opened.

13 Q. What color shirt?

14 A. I believe it was white.

15 Q. Okay.

16 A. He had a white tee-shirt under.

17 Q. Who was this man with?

18 A. He was with another gentleman, a friend of
19 his.

20 Q. What did he look like?

21 MR. BRUNO: Objection to a friend.

22 THE COURT: Sustained. He was with
23 another gentleman. Move on.

24 A. He was with another gentleman. And the
25 other gentleman was a little smaller, slim, skinny.

1 Q. Okay. Are you able to tell us, if you
2 could tell, his race?

3 A. They were black.

4 Q. Both black?

5 A. Yes.

6 Q. Were they arguing with each other or with
7 someone else?

8 A. No, they were arguing with another
9 gentleman.

10 Q. Tell me about that other gentleman.

11 A. He was taller. He was much taller, about,
12 I would say at that time six feet. He was in, he was
13 in his young early twenties. He was slim. He wasn't
14 big. And he was with a girl.

15 Q. Did you know what she looked like?

16 A. Ah, no, because I actually got the back
17 view of it and I didn't pay too much mind when the
18 argument broke out, it didn't break out into anything.
19 It just went, I heard it from afar.

20 Q. Did you see anybody making any gestures or
21 anything like that?

22 A. The black gentleman had his hand, you know,
23 raised like he was talking, arguing with.

24 Q. You'd mentioned at least two black people.
25 who?

1 A. The gentleman who was shot.

2 Q. Okay.

3 A. I mean him.

4 Q. Can you later see this guy and he appeared
5 to be shot?

6 A. Yeah.

7 Q. Okay. Now, in relation to the two or three
8 men you've previously described, which one was he?

9 A. The gentleman who was shot?

10 Q. Yes.

11 A. He was the chubby one, black, chubby
12 cheeks.

13 Q. In the white shorts and the white shirt?

14 A. Yeah.

15 Q. So, tell us again what gestures, if any, he
16 was making?

17 A. With his hands, he was getting loud and he
18 would gesture with his hand.

19 Q. Who was he doing this to?

20 A. To the other tall gentleman across from him
21 that was with the young lady.

22 Q. And what was that gentleman, if anything,
23 doing back?

24 A. Well, they were arguing. They were both
25 almost not in each other's faces but they were close

1 enough.

2 Q. Did that other taller man use his hand as
3 well?

4 A. Yes, they were gesturing to each other.

5 Q. You're making a motion like you're pointing
6 with a gun.

7 A. Not with a gun.

8 MR. BRUNO: Objection.

9 THE COURT: Overruled.

10 A. Not like a gun.

11 Q. Did you just make a motion in open court
12 like putting your index finger out?

13 A. Yeah, they were putting their hands in each
14 other's faces, not directly, but from where they were
15 standing two or three feet apart. They were arguing
16 and gesturing with their hands.

17 Q. Did you hear any part of the conversation?

18 A. No. The theater is kind of loud because
19 the ticket booths were still open and I didn't pay it
20 any mind because the other security guards were
21 already there trying to calm the situation down.

22 Q. Was the female getting involved?

23 A. She was adding her two cents in too.

24 MR. BRUNO: Objection, your Honor. If
25 he couldn't hear, what two cents?

1 THE COURT: Sustained.

2 Q. What was she doing that you could see?

3 A. Well, from behind you could see she was
4 talking and grabbing her boyfriend and they were
5 having an argument.

6 Q. She was having an argument with the
7 boyfriend?

8 A. No, she was going back at the two guys that
9 were across from her.

10 Q. What, if anything, was the slim friend
11 doing with the man in white with the chubby cheeks?

12 A. They were trying to separate, not separate,
13 break themselves up as far as not to get involved, not
14 to --

15 MR. BRUNO: Objection, your Honor. He
16 said he couldn't hear a thing.

17 THE COURT: I'll allow that answer.

18 Next question.

19 Q. What did you see them do, if anything?

20 A. They were having an argument.

21 Q. What made you draw the conclusion, sir,
22 that someone was trying to break themselves apart, you
23 just said that?

24 A. Right. They were trying to break
25 themselves up from getting into a fight.

1 MR. BRUNO: Objection, your Honor.

2 THE COURT: Sustained as to getting
3 into a fight.

4 Q. What did you see? What movements, if any,
5 motions that you could see that made you draw this
6 conclusion that someone was trying to squash this
7 fight?

8 A. They were backing away from each other.
9 They were at the concession stand and everybody there
10 was trying to, you know, break it up.

11 MR. BRUNO: Objection as to his
12 conclusion.

13 THE COURT: Sustained as to his
14 conclusion.

15 Q. From what you could see, was anybody
16 pulling them apart from each other?

17 A. The girlfriend was holding onto her
18 boyfriend and the young kid was pulling back his
19 friend.

20 Q. All right. Did anyone else, from what you
21 could see, have his hand on either of the two main
22 arguing people?

23 MR. BRUNO: Objection as to "main".

24 THE COURT: Sustained.

25 Q. All right. Were you able to see, if any

1 one of these four people you've now talked about
2 appeared to be the most involved with each other?

3 MR. BRUNO: Oh, objection.

4 THE COURT: Sustained.

5 MS. MATTAWAY: Okay.

6 THE COURT: Sir, you saw what appeared
7 to you to be four individuals engaged in an
8 argument, correct?

9 THE WITNESS: Correct.

10 THE COURT: Two guys on one side, a guy
11 and girl on the other side?

12 THE WITNESS: Correct.

13 THE COURT: It also appeared to you in
14 the midst of this argument with everything you
15 said there was hand movement?

16 THE WITNESS: Yes, there were.

17 THE COURT: And you also saw two people
18 trying to pull two others apart or separate them,
19 cause distance between the two of them?

20 THE WITNESS: Correct.

21 THE COURT: Next question.

22 Q. what happened next?

23 A. security was on the scene. They separate,
24 they kind of calmed the situation down.

25 Q. what did they do?

1 A. They got in between both guys and they
2 tried to talked them, listen, it's not worth it --
3 they just got them to separate and go their ways.

4 Q. Did you know who these security guards
5 were?

6 A. If I remember correctly, it was Jonesy
7 (Jone-zee) and I don't remember the other guy's name.
8 I mean, it's been so long.

9 Q. One is Jonesy (Jone-zee)?

10 A. I know him as Jonesy (Jone-zee). His name
11 is Greg Jones.

12 Q. Did you at any time leave your place by the
13 front ticket booth and go assist them?

14 A. No.

15 Q. Did you at any time change your position
16 from where you were by the ticket booth?

17 A. Yes, after the ticket booth closed. The
18 ticket booth closes after the theater is sold out. I
19 walked the ticket booth girl with her register back to
20 the main office and I take her position behind the
21 concession stand by Theater Five, just to view
22 everything coming in and to the sides.

23 Q. All right. Before we get to that point,
24 let me bring you back to this point where the security
25 guards appear to be trying to break up these two

1 groups, right?

2 A. Correct.

3 Q. How does that end? What do you see?

4 A. I see the taller gentleman, he leaves the
5 theater.

6 Q. What do you mean by that?

7 A. He vacates the premises. He walks out the
8 front door.

9 Q. And where does the female go?

10 A. I can't tell you. I was paying mind to
11 what I had to do on my station but I saw that he went
12 out the front door.

13 Q. Did he do anything else besides turn around
14 and go?

15 A. Well, they kept still cursing and yelling.

16 MR. BRUNO: Objection. Couldn't hear a
17 thing.

18 THE COURT: Overruled.

19 You say he walked out of the theater?

20 THE WITNESS: Yes. And he was saying,
21 he was saying his parting shots at the guy and
22 the security.

23 MR. BRUNO: Objection to "parting
24 shots".

25 THE COURT: Overruled.

1 THE WITNESS: Okay.

2 THE COURT: Next question.

3 Q. What is it you remember hearing, if
4 anything?

5 A. He had said, yelled out he was going to go
6 get his gun.

7 Q. Okay. Is where you are at the ticket booth
8 anywhere in the vicinity of this man as he's leaving?

9 A. Yeah, because I'm in the middle, as you
10 walk in there is a rope that lines up all the folks
11 for the ticket booth. I'm in the middle of the rope
12 and the ticket booth and the entrance doors.

13 Q. Okay. Taking a look at photograph B, 3B
14 that's in evidence, all right. What door is depicted
15 in that photo?

16 A. The front door of the theater.

17 Q. Okay. Is that the same front door you saw
18 this guy go?

19 A. That is correct.

20 Q. All right. When you saw him go, at what
21 point, if you see that spot anywhere in that photo,
22 did he say he was going to go get his gun?

23 A. Right in between the concession stand and
24 the door.

25 Q. Okay.

1 A. As he's walking out.

2 Q. All right. And in terms of distance, using
3 this courtroom or something, can you tell us about how
4 far away you are from this guy?

5 A. If that wall is the concession stand, that
6 gentleman is standing right about here and the front
7 door is that wall.

8 Q. Is the width of the courtroom approximately
9 the same as the length?

10 A. It's a little wider.

11 Q. From the concession stand to the front
12 glass entrance of the Whitestone Cinema?

13 A. Yeah, I mean, I would say about the end of
14 this testimony booth here.

15 Q. Sorry, sir.

16 A. I was just using the walls as an example
17 but if you want exact distance, I would say from the
18 wall to about here approximately.

19 THE COURT: That's how far away he was
20 from you when you heard him say that?

21 THE WITNESS: No, that's the concession
22 stand and these are the front doors.

23 THE COURT: For the purposes of the
24 record, indicating approximately 22 to 24 feet.

25 Q. The person with the chubby cheeks and

1 dressed in white who he had been earlier arguing with,
2 where was that guy at the time he's saying this?

3 THE COURT: Who's saying what?

4 Q. The man who said "I'm going to go get my
5 gun," where was the other guy?

6 A. The other guy was about over here on this
7 side of the concession stand with security.

8 Q. Security was still around?

9 A. Yeah, they were still in the front. That's
10 where we're always stationed in front of the
11 concession stand in the front of the theater.

12 Q. What, if anything, was that guy saying in
13 response or anything like that?

14 A. Again, they were just going at each other
15 with words. To one guy he made the comment and he
16 walked out the theater, the taller gentleman.

17 Q. And the other guy who's dressed in white
18 with the chubby cheeks, what did he do?

19 A. I don't know. By that time security had
20 calmed the issue. They had him to the side. I went
21 back to my duties. I believe he went to go see his
22 movie.

23 MR. BRUNO: Objection to what he
24 believes.

25 THE COURT: Sustained as to what he

1 believes.

2 Q. Did you see in which direction he walked?

3 A. No, I can't remember if he walked in the
4 front of the concession stand to Theater One or he
5 walked around it, I don't know.

6 Q. Did you see anything in his hand?

7 A. I'm not, I don't remember. I don't know if
8 he had stuff they were purchasing at the concession
9 stand in his hand or if he left it on the counter.

10 Q. Do you recall what happened to the other
11 man, the slim man?

12 A. He walked out the theater. Oh, the friend
13 of the chubby?

14 Q. Right. The friend of the chubby cheek man,
15 not the man who walked out the theater.

16 A. No.

17 Q. When is the last time you recall seeing
18 him?

19 A. The slim guy? I recall seeing him after
20 everything was, after the incident happened.

21 Q. Okay. And I apologize if I asked you this
22 question already. Did you see what happened to the
23 female?

24 A. No, I do not. I didn't pay any --

25 Q. Did you watch the man who said "I'm going

1 to go get my gun" as he left the theater?

2 A. Yes, he walked out the front door.

3 Q. How past out the front door were you able
4 to see him before you lost sight of him?

5 A. I'd say as soon as he went through the
6 front door because I'm standing on the side of that,
7 so I don't see him. I saw him as he walked out. I
8 don't know if he went to the right, to the left, or --

9 Q. Did you have any conversation about what
10 had just happened with Jonesy (Jone-zee) or anyone
11 else?

12 A. Yeah, we're all talking about, Oh, the guy
13 said he was going to go get his gun and the other guy
14 said, yeah. It was what we heard because the people
15 at the concession stand told us what they were arguing
16 about.

17 Q. Did anybody from the security staff, if you
18 know, go out to the parking lot or the front of the
19 theater to follow this guy who made the threat?

20 A. No.

21 Q. Is there a reason why?

22 MR. BRUNO: Objection, he can't speak
23 for security.

24 THE COURT: Sustained.

25 Q. Did you have a boss at that time?

1 A. Yeah, Jonesy (Jone-zee) was the boss.

2 Q. Okay. And did Jonesy (Jone-zee) tell you
3 to do anything with regard to this incident?

4 A. He just said "Keep an eye out," you know,
5 on the theater, to see if the guy comes back.

6 Q. And what, if anything did you do?

7 A. Well, I took a position by, again, behind
8 the concession stand by Theater Five and we just, from
9 an eye, watched the theater, the front doors, the
10 side. And we had walked around when needed into the
11 theaters just to make sure everything is okay.

12 Q. All right. Did you -- withdrawn.

13 At what point did you do that part of your
14 testimony where you said you walked the girl with the
15 box?

16 A. That's after the ticket booth closed
17 because it was a live show, they closed it up.

18 Q. Right.

19 A. We walked her back to the office and then I
20 came back out and took my position near Jonesy
21 (Jone-zee) and the rest of the guys that were standing
22 out there.

23 Q. How soon after you had seen the man leaving
24 out the front door did the ticket booth close?

25 A. I'd say fifteen, twenty minutes if --

1 approximately, again it's eighteen years ago.

2 Q. I know. Where did you go when you walked
3 this girl someplace?

4 A. I came back to the concession stand to take
5 my post along Jonesy (Jone-zee) and the rest of the
6 guys.

7 Q. No, I'm saying you walked the woman
8 someplace?

9 A. Yes, I walked her to the office.

10 Q. So there came a time you walked, left the
11 front of the theater area that's depicted in B?

12 A. Yes, because the ticket booth was closed.
13 There was no more tickets being sold for any shows.

14 Q. And where, can you see any of the places
15 where you walked with her in any of those photos?

16 A. This is the corridor but the office is up
17 more.

18 Q. Okay. Photograph 3D?

19 A. Yeah, D, because when you walk in the
20 offices are to the left of the concession stand.

21 Q. And in one of those doors there is an
22 office?

23 A. Yes.

24 Q. And that's where you were with her?

25 A. That's where I walked her too.

1 Q. You didn't go in?

2 A. No.

3 Q. How long did that take you?

4 A. Three minutes to walk from the ticket booth
5 to the office.

6 Q. Then what happened?

7 A. Then I went and took a position with Jonesy
8 (Jonesy) and the rest of the guys that were behind
9 the concession stand alongside the theaters.

10 Q. How long were you standing there before
11 something happened?

12 A. I'd say about forty minutes.

13 Q. Then what happened?

14 A. We heard, I heard something that sounded
15 like M-80s going off, pop, pop, pop. And a lady comes
16 running down the corridor saying that there's
17 gunshots, gunshots. And then we get something over,
18 there was security guards in the theater already who's
19 checking the doors, making sure nobody is sneaking in.
20 And we got the call over the radio, code ten, code
21 ten, Theater One.

22 Q. What is that?

23 A. Security guard in need of assistance. And
24 we all start, you know, we get the call, we start
25 running. I run past. I'm running to my right. The

1 lady is like in a hurry, walk past me, and I'm running
2 to the theater.

3 Q. Do you see the place you went in any of
4 those photos?

5 A. Yeah, in pictures C and D.

6 Q. Okay.

7 A. Or D is the main picture, that's the
8 corridor I was running down.

9 Q. Correct. And what does C show?

10 A. C shows the two theaters that Batman was
11 playing in One; and Theater Two, whatever was playing
12 there.

13 Q. Okay. And is the hall empty or what?

14 A. The hall is pretty much empty because the
15 one lady, she is already by Theater Three or Four when
16 I pass her.

17 Q. Okay. And what, where do you go when
18 you're running?

19 A. I'm running toward Theater One.

20 Q. And what happens next?

21 A. I'm running, and a gentleman about six one,
22 tall, light-skin like myself or how you want to put
23 it, he comes out of the theater, he comes out of these
24 doors because he swings around and he's holding a gun,
25 black gun with, you know, you know, a brown handle.

1 And he comes out like he has the gun still up in the
2 air. I see that, and of course I'm no hero so I jump
3 in the corridor of Theater Two. I'm sorry, they don't
4 pay me enough to chase guys with guns.

5 Okay, but I see him. He comes, he's coming out
6 of Theater One and I'm running toward him and there is
7 a couple of security guards behind me and we all did
8 the same thing. We duck in the hallways of the
9 theater.

10 Q. Did you have any conversation with this
11 guy?

12 A. With the guy with the gun?

13 Q. Yeah.

14 A. No, I did not.

15 Q. Okay. And you say it was still in his
16 hand?

17 A. It was still in his hand.

18 Q. You've made a gesture here in court as
19 you're holding a gun. Can you do that again?

20 A. He had the gun up here as he came out of
21 the theater, as he saw I wanted no part, I went into
22 Theater Two, he was putting the gun down and putting
23 it in his waistband.

24 Q. Can you stand up and demonstrate what you
25 saw this guy do?

1 A. Okay. He's coming out running this way and
2 we see, we're about ten feet from each other, if that
3 much. He sees I run into Theater Two and he's putting
4 the gun in his waistband, in his band in his shorts.
5 He's wearing shorts.

6 Q. All right.

7 A. And then he runs out the side doors which
8 are not here.

9 Q. Okay.

10 A. But he runs out, I said a green fire exit
11 doors that are positioned right in front of Theater
12 One.

13 MS. MATTAWAY: The record should
14 reflect the witness stood up in open court and
15 made a gesture as if he was holding a gun in his
16 right hand and across his body tucked the gun in
17 his waistband?

18 A. He was holding a gun.

19 Q. When he came out of Theater One?

20 A. Yes, he was.

21 Q. Did anyone else come out of Theater One at
22 the same time he did?

23 A. No. He's the only one that flew past out
24 of Theater One when the commotion had, the shots had
25 stopped.

1 Q. Are you able to tell us about how high up
2 in the air he had this gun?

3 A. I would say he had it about shoulder high.

4 MS. MATTAWAY: The record should
5 reflect the witness has stood up in open court,
6 held out his arms in front of him.

7 A. Shoulder high, yeah, but when he saw that
8 we were all ducking for cover ourselves --

9 MR. BRUNO: Objection as to conclusion
10 what he saw or didn't see.

11 THE COURT: Sustained.

12 A. He put the gun away when we all ducked for
13 cover.

14

15 (Continue on the following page.)

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Centeno-People-Direct

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1 MS. MATTAWAY: Okay. One moment please,
2 your Honor.

3 Okay. At this time I ask that the witness
4 take a look at People's 4A through D.

5 THE COURT: I think we have to mark it
6 first.

7 MS. MATTAWAY: Yes, please. I like to
8 have them marked for identification.

9 THE COURT: May I see them for a second?
10 (Whereupon, four exhibits are marked by
11 the reporter as People's 4a through 4d)

12 COURT OFFICER: So marked, People's 4A
13 through D.

14 (Hanging)

15 Q. Do you know what those are, sir?

16 A. Yeah. These are pictures of the fire exits.
17 Pictures of the theater, one the stairs leading from
18 the fire exit and the actual door of the fire exit.

19 Q. Are they fair and accurate representations of
20 where the same door to theater one and the fire exit
21 doors were back in 1989?

22 A. Yes.

23 Q. The layout is the same?

24 A. Exactly. Aside from the carpeting, the
25 layout is the same.

Centeno-People-Direct

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1 Q. How about the green doors? Are they still
2 green?

3 A. No, they are red now.

4 Q. But is it the same location?

5 A. Same location.

6 Q. Okay.

7 MS. MATTAWAY: I offer them as People's
8 4A through D.

9 THE COURT: Show them to counsel.

10 MR. BRUNO: May I see them?

11 (Handing)

12 MR. BRUNO: May I voir dire, sir?

13 THE COURT: Go right ahead.

14 Q. You covered the issue about the decor.

15 A. Okay.

16 Q. We covered that. The decor has changed.

17 A. Okay.

18 Q. You know what's puzzling me? How do you know
19 it's theater one? Don't the fire doors look the same?

20 A. No. The fire doors on that side was right in
21 between theater one and theater two.

22 Q. If there is a fire on the other side of the
23 theater? You just die?

24 A. There are exit doors on that side, but I know
25 where these exit doors are at.

Centeno-People-Direct

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1 Q. And again, similar to before the last batch
2 of pictures, aren't you saying that it looks like
3 theater one because that's the subject of this case?

4 A. That is theater one.

5 Q. If I'm wrong, I'm wrong.

6 A. You're wrong. That's theater one.

7 Q. What indication do you have that these doors
8 are the doors that are in the vicinity of theater one
9 as opposed to two, three, four, five, that's all I'm
10 asking?

11 A. Those are the only exit doors on that side of
12 the corridor.

13 Q. But that's the point. What if the photograph
14 were taken of the other side?

15 A. It's not because you could see from the signs
16 it's theater one, theater two.

17 Q. How? Is there a sign?

18 A. Up top.

19 Q. There is a one there?

20 A. No, that's just --

21 Q. I see emergency lights. You see numbers?

22 MS. MATTAWAY: Your Honor, I object at
23 this point.

24 THE COURT: Sustained.

25 A. Trust me. That's theater one.

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1 MR. BRUNO: I don't trust you.

2 THE COURT: Sustained.

3 MR. BRUNO: I don't trust you.

4 THE COURT: Sustained Mr. Bruno. Are
5 you done? Any objection?

6 MR. BRUNO: Again no objection. Subject
7 to what -- the records obviously speaks for
8 itself.

9 THE COURT: People's 4A through D in
10 evidence.

11 COURT OFFICER: So marked. People's 4A
12 through D in evidence.

13 Q. I'm sorry. Okay. Okay. Can you just please
14 tell us sir briefly what 4A through D are? I apologize
15 that I don't have them mounted on the board at this
16 time.

17 A. 4A are the stairs that are directly outside
18 those exit doors by theater one and two.

19 Q. Where do those stairs go to?

20 A. They lead you to the parking lot. B is one
21 of the actual exit doors being opened.

22 Q. Where does that lead to if you go through
23 that doorway?

24 A. Through the stairs.

25 Q. Is that what was depicted in the first photo?

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1 A. Yes.

2 Q. Okay. Please continue.

3 A. 4C is the actual picture of the doors and
4 theater one in the corner.

5 Q. Can you tell us how 4C relates to 3D, sir?

6 A. It's the corridor. 3C is the actual door to
7 get into the theater. From when you walk in there two
8 entrances one to the left one to the right.

9 Q. Correct?

10 A. This picture is to the right, the entrance to
11 the right.

12 Q. Okay.

13 A. And you have to walk here. There is that
14 door is to the left.

15 Q. Which photograph are you pointing to now in
16 open court, sir?

17 A. 4C. 4C has a picture of the doors that are
18 to the left.

19 Q. And where is theater one in relation to 4C,
20 sir, 4C that you're holding in your hands?

21 A. Where is -- that is theater one.

22 Q. Can you please show us -- I apologize.
23 Please put the photos down. With your free hand can
24 you point to where theater one is?

25 A. Theater one is right here.

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1 Q. All right.

2 MS. MATTAWAY: I'd ask that the witness
3 be given this black magic marker.

4 Q. Can you make -- write number one right on it
5 so we could see please.

6 A. That's theater one.

7 Q. All right. Regarding the red doors to the
8 left of that photograph, okay, what did you see on July
9 3rd, 1989, regarding those doors?

10 A. I saw the gentleman come out of the theater,
11 run and go out these side exit doors.

12 Q. Those doors?

13 A. These doors right here. Yes, to the left.

14 Q. And photographs 4A and B which we just
15 covered, are those fair and accurate representations of
16 what happens if you push through one of those doors
17 where you go through?

18 A. Yes. You go to the left -- to the right to
19 the stairs. You go down, leads you to the parking lot.

20 Q. Finally, could you show us what 4D was, sir,
21 the last photo that you have in your batch there?

22 THE COURT: You have it on top.

23 A. 4D is the actual door to the right of the
24 theater.

25 Q. Which theater?

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1 A. Theater one.

2 Q. Okay. Using that black marker again could
3 you please write number one so we could see.

4 A. That's the right hand entrance to theater
5 one.

6 Q. When you encountered this man, do any of the
7 photos that you have with you show the approximate spot
8 where you encountered him?

9 A. Yes.

10 Q. Which photo if any?

11 A. 4C.

12 Q. 4C?

13 A. Yeah.

14 Q. Okay. Can you flip it and show us first
15 where you saw the man?

16 A. Right about here.

17 Q. That's where you saw him with the gun?

18 A. Yes, as he swung around he ran out and he was
19 running towards me with the gun shoulder high and I'm
20 running down the opposite direction from him and I duck
21 into theater two.

22 Q. Okay. Are you able to draw a stick figure
23 right on there for the approximate spot where you saw
24 the man right on 4C, please?

25 THE COURT: Make a C where you think you

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1 saw him.

2 MS. MATTAWAY: Or an X. All right.

3 Q. Now, you said that you ran in the opposite
4 direction, sir?

5 A. I was running opposite him. I was coming
6 towards him.

7 Q. Initially?

8 A. Initially I was running towards him.

9 Q. How far did you get before you turned around
10 and went back to theater two or towards theater two?

11 A. I didn't turn around. I was actually at
12 theater two when I saw him come out, just getting there
13 and he was running towards me.

14 Q. Right.

15 A. He had the gun and I dipped right into the
16 cubby of theater two. I didn't stop. I went right to
17 the side and ducked into theater two.

18 Q. At this time I'd like to have this photo
19 marked as People's 5 please.

20 (Whereupon, a photograph is marked as
21 People's 5 for I.D. by the reporter)

22 COURT OFFICER: So marked.

23 Q. Okay. Please look at that photo. Do you
24 know what that is? What does that show?

25 A. That's the actual corridor going the other

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1 way now. This is at theater one and it's showing you
2 all the theaters one through ten or twelve.

3 Q. Is that a fair and accurate representation of
4 the layout of the Whitestone Cinema showing the wrong
5 corridor from the other direction?

6 A. Yes, it is.

7 MS. MATTAWAY: I offer it as People's 5.

8 THE COURT: Show it to counsel.

9 MR. BRUNO: May I voir dire?

10 THE COURT: Go right ahead.

11 VOIR DIRE EXAMINATION

12 BY MR. BRUNO:

13 Q. So again I assume but for the decor that this
14 is what the place looked back in '89; is that your
15 testimony?

16 A. That's the place back in '89, yes.

17 Q. And the way this is laid out, would you be
18 saying in effect theater one would be behind the camera
19 guy in this picture?

20 A. Theater one you could see a slight shot of it
21 on your thumb. That's the theater one, right. That's
22 theater one right there.

23 Q. In so many words if one were taking this
24 picture, one would be standing parallel with the other
25 one?

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1 A. That's correct.

2 Q. And again what indication do you have that
3 that's theater one in that theater in '89? What
4 indications do you have from this?

5 A. I know the layout of the theater. I worked
6 there for six months.

7 Q. I got you. There is a sign in front of you
8 that says theater one, so it says two, three, four.

9 A. There you go.

10 Q. We agree. Although how do you know it's the
11 Whitestone theater?

12 MS. MATTAWAY: I object.

13 Q. You been to the Raceway Cinema in Westbury?

14 MS. MATTAWAY: I object.

15 THE COURT: Sustained.

16 Q. Have you ever been there?

17 MS. MATTAWAY: I object.

18 THE COURT: Sustained.

19 A. No, I haven't.

20 THE COURT: Don't answer it. Next
21 question.

22 MR. BRUNO: I'll ask you on cross.

23 Don't worry. No objection, your Honor.

24 (Whereupon, People's 5 for
25 identification is now marked into evidence as

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1 People's 5)

2 COURT OFFICER: People's 5 received in
3 evidence.

4 Q. Mr. Centeno, please take a look at that
5 photographer, sir.

6 Do you see the approximate spot on that photo
7 where you ducked into theater two?

8 A. Yes.

9 Q. Can you use that black marker that I gave you
10 previously and just indicate where you went into
11 theater two and where theater one was in relation to
12 where you were?

13 (witness complies)

14 Q. Oh. This is on People's 5, yeah.

15 A. That's X, one is theater one.

16 Q. Correct?

17 A. X two is theater two.

18 Q. And to the right of photograph that's
19 People's 5, are those the same exit doors you've been
20 talking about?

21 A. Yes, they are.

22 MS. MATTAWAY: Final photo. I'd like to
23 have this one marked as People's 6.

24 (Whereupon, a photo is marked as
25 People's 6 for identification by the reporter)

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1 COURT OFFICER: So marked.

2 Q. Please take a look at People's 6. Do you
3 know what that is?

4 A. Yeah, a picture of the concession stand, a
5 side shot and it's -- yeah. A side shot of the
6 concession stand and the corridor leading to the
7 theaters.

8 Q. And is that a fair and accurate
9 representation of the way the concession stand back of
10 it and then the entrance where the theater looked back
11 on July 3, 1989?

12 A. Yes.

13 MS. MATTAWAY: I offer it as People's 6.

14 THE COURT: Show it to counsel.

15 (Hanging)

16 MR. BRUNO: You've been to the Roosevelt
17 Field Cinema in Mineola?

18 MS. MATTAWAY: Objection.

19 THE COURT: Sustained.

20 MR. BRUNO: I have no objection.

21 THE COURT: People's 6 in evidence.

22 (Whereupon, People's 6 for ID is now
23 marked People's 6 in evidence by the reporter)

24 COURT OFFICER: People's 6 now marked in
25 evidence.

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1 MS. MATTAWAY: I have nothing further.

2 Thank you.

3 CROSS EXAMINATION

4 BY MR. BRUNO:

5 MR. BRUNO: May I proceed.

6 THE COURT: Does anybody in the jury
7 need to take a break or stretch a leg?

8 Everybody is okay.

9 THE JUROR: Rest room.

10 THE COURT: We'll take like a five
11 minute break. You go and stretch your legs.

12 (Whereupon, a brief recess is taken)

13 THE COURT CLERK: Case on trial
14 continues. All parties are present and properly
15 seated.

16 THE COURT: You may inquire.

17 MR. BRUNO: Thank you, sir.

18 CROSS EXAMINATION

19 BY MR. BRUNO:

20 Q. Good afternoon Mr. Centeno.

21 A. Good afternoon.

22 Q. Am I correct that back in '89 when you were
23 employed at the theater, you were 26 years old?

24 A. Yes.

25 Q. And you said your primary job at that time

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1 was at Production Security?

2 A. Correct.

3 Q. What was your job at Production Security?

4 A. I was supervisor in the operations
5 department.

6 Q. What does that mean? What did you do?

7 A. Meaning I took care of rich people's money.

8 Q. And what is your current job, not saying
9 which company?

10 A. I'm an investment banker.

11 Q. Now, you indicated early on -- withdrawn.
12 You're describing an occurrence back in '89, so when I
13 say early on, I'm talking about that evening. You
14 describe early on in this scenario that in affect
15 you're in the lobby at the ticket booth; am I correct?

16 A. Stationed at the ticket booth.

17 Q. And you indicate that although you have
18 difficulty hearing because there is a lot going on, you
19 could observe?

20 A. Yes.

21 Q. And you indicated in summary -- I won't go
22 through all of it, that you observed what looks like an
23 argument?

24 A. Correct.

25 Q. And it looks like an argument on one hand

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1 involving two black guys, or like one set of friends so
2 to speak and then the other team as it were is a taller
3 slimmer man with a girl, correct?

4 A. Correct.

5 Q. Now, the DA never asked you what was the
6 apparent race or ethnicity of the taller slimmer guy.

7 A. I assumed he was my complexion. I assumed he
8 was Black. Light-skinned Black person.

9 Q. I see. Are you telling us you're Black?

10 A. No, I'm Spanish. But from afar I assumed I
11 thought he was Black.

12 Q. Well, now, it was towards the end of your
13 testimony you even -- you stated referring to what
14 would be the slender guy with the girl, you stated you
15 know, light-skinned, like me. So I don't understand if
16 the man has complexion like you and you acknowledge
17 you're Latino, or whatever term you want to use?

18 A. Yes.

19 Q. Light-skinned like me and you acknowledge
20 you're a Latino, but then you told us the tall slim guy
21 has your complexion, so therefore I assume he's Black.
22 I'm confused.

23 MS. MATTAWAY: I object to defense
24 counsel's confusion.

25 Q. Can you explain?

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1 THE COURT: I won't comment on defense
2 counsel confusion, but watch your phraseology.

3 Do you understand the question?

4 THE WITNESS: Does he want me to answer
5 why I think the guy was Black?

6 Q. Yeah.

7 A. I just took it for granted Black guys were
8 arguing at the concession stand.

9 Q. In other words, using the scenario that
10 night, if a Latino had taken umbrage, had taken offense
11 of these two Black guys, there would be no argument?

12 MS. MATTAWAY: Objection.

13 THE COURT: Sustained.

14 Q. I'm not gonna debate with you. Okay. Fine.
15 That's your reasoning, okay. Fine.

16 Let me ask you this, in preparing to testify
17 today I assumed you conferred with the DA. It's not
18 improper, correct?

19 A. Yes, we spoke.

20 Q. Did she show you any reports or statements
21 involving you from back in '89?

22 A. Yeah, she did.

23 Q. She did. And in fact, in '89 at 7:10 in the
24 morning -- in other words, in affect there was all this
25 raucous at the theater, some of you folks stayed around

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1 and cops interviewed you?

2 A. When you say seven in the morning.

3 Q. Forget the hour. You stayed being
4 interviewed by cops?

5 A. Yes.

6 Q. And you were interviewed by the lead
7 detective, Detective Serrano?

8 A. I don't remember the detective's name. I
9 know it was a detective.

10 Q. Okay. And do you recall reporting -- you
11 don't know the name to Mr. Detective, that the person
12 you saw you mean the apparent shooter was a male Black
13 in his twenties?

14 A. Yeah.

15 Q. Correct?

16 A. Yeah.

17 Q. And a male Black in his twenties with dark
18 complexion, correct?

19 A. Okay. Yeah.

20 Q. Not okay. Is that what you said?

21 A. I assumed the guy was Black.

22 Q. No, no, no sir. Being interviewed by a
23 detective at some time that morning meaning within
24 hours of the shooting?

25 MS. MATTAWAY: I object.

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1 THE COURT: Overruled.

2 Q. You reported to the detective that the person
3 involved was a male Black in his twenties, dark
4 complexion, correct?

5 A. Yes. If that's what my statement I made to
6 the detective, then back 18 years ago yes I said that.

7 Q. And in fact, keeping it brief trying to be a
8 bit considerate here, the first part of your testimony
9 today in so many words you're in the vicinity of the
10 lobby able to observe the apparent argument, correct?

11 A. Correct.

12 Q. And you're in the vicinity of the lobby able
13 to then see the apparent shooter leaving?

14 A. Not in the vicinity of the lobby. I was
15 running towards the theater and the shooter.

16 Q. I'm sorry. I'm confused now. I'm saying--
17 withdrawn.

18 You know what, we'll keep it simple then.
19 All right. You testified you observed an apparent
20 argument at the concession stand?

21 A. Correct.

22 Q. You testified that you see -- you see the
23 respective friends trying to pull them away, meaning
24 the friends of the chubby Black guy is trying to back
25 him off the female friend of the other guy, dark, light

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1 black Latino? The girlfriend of the other guy is
2 trying to pull him away from the raucous, correct?

3 A. Correct.

4 Q. And you observed that. You then, whatever it
5 is, moments later whatever, you were then close enough
6 to now observe and hear the slimmer guy saying in
7 essence I'm going for my gun and he does leave the
8 premises, correct?

9 A. Correct.

10 Q. You observed that. So your testimony today
11 is that you at least observed and to an extent hear
12 what constitutes let's call it the original argument,
13 correct?

14 A. Correct.

15 Q. Let's harken back now to your interview by
16 the detective whom you can't place at some time in the
17 morning.

18 Did you not report to him that you were on
19 duty at the time of the shooting and were in the lobby
20 when you heard three pops?

21 A. That's correct, behind the concession stand.
22 That's the lobby.

23 Q. No, no, no, no. What I'm saying is in
24 summary then -- if need be you could refresh your
25 memory.

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1 A. Okay.

2 Q. Didn't you in essence -- you were there as a
3 security guard. It was a crazy night with a shooting.
4 Did you not in essence report to the lead detective
5 that your first involvement is after the shooting. You
6 weren't involved in the lobby at all. Is that not
7 correct, sir?

8 MS. MATTAWAY: I object to involved.

9 THE COURT: Overruled. You may answer.

10 A. When you mean involved in the lobby as far as
11 standing with the other security guards.

12 Q. I'll rephrase it. I'll rephrase it. I try
13 to save time and it's more confusing. You're on duty
14 as a security guard. What you're telling us in essence
15 if I'm wrong this is important, correct me.

16 You're saying that in essence that the
17 argument in the lobby apparently resulted in the
18 shooting in theater one. Is that a fair summary to
19 save a lot of time?

20 A. Correct.

21 Q. And am I correct as a security guard knowing
22 at the end of the night that a murder resulted if you
23 had observed the argument that led to the shooting,
24 you'd have certainly reported that as a human and as a
25 security guard; am I correct?

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1 A. That's correct, but I wasn't --

2 Q. I'm sorry. Go ahead. You wasn't what?

3 A. I wasn't standing right there when they were
4 arguing, what they were saying to each other.

5 Q. This I know. But in other words, you saw fit
6 to report that today; am I correct?

7 A. Yes.

8 Q. And 18 years ago within hours of the shooting
9 as a security guard on duty would you not have reported
10 that to the investigating cop that I saw what led to
11 this?

12 A. It wasn't asked. They didn't ask me about
13 that.

14 Q. You're telling us that the detective -- you
15 know what -- withdrawn.

16 Is it not a fact that you told this detective
17 that you see -- well let's back up.

18 "At the time of the shooting I was in the
19 lobby. I heard three pops. I thought they were
20 M-80's."

21 A. That's correct.

22 Q. A lady came out of the "Batman" movie and
23 told me there was a shootout inside; is that correct?

24 A. She didn't tell me. She ran past me. As I
25 was running --

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1 Q. So she yelled it out and she fled?

2 A. Right, because we heard the pops over the
3 radio. There was a security guard in the theater.

4 MS. MATTAWAY: Objection. The witness
5 is trying to answer.

6 THE COURT: Sustained.

7 Q. And did you further report that as you
8 approached the front of theater one you see that male
9 black 5'11" slim face, dark complexion, exiting tucking
10 a firearm in his waistband?

11 A. Not in front of theater one. I wasn't in
12 front of theater one when I encountered the gentleman.

13 Q. Okay. You then took cover in the entranceway
14 doorway, correct?

15 A. Theater two.

16 Q. And did you leave off reporting to the
17 detective that this was the first time I had seen this
18 male?

19 MS. MATTAWAY: I object. Leave off.

20 What is that?

21 THE COURT: Rephrase that question.

22 Q. Okay. Did you advise the detective this was
23 the first time I had seen this male?

24 A. I don't remember.

25 Q. Okay. Let me ask you this and then I'll move

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1 on. If I tell you that Detective Serrano will testify
2 here at a later time will any of your testimony change
3 today?

4 A. No.

5 Q. So you're telling this jury that in affect
6 you're on board, you're involved, you're observing from
7 when the argument erupts; am I correct?

8 MS. MATTAWAY: I object. I object.

9 Q. Is that correct?

10 THE COURT: Sustained.

11 Q. All right. All your testimony this morning
12 was true you're telling us?

13 A. Yes.

14 Q. Okay. And it may sound obvious, is it fair
15 to say that your memory would have been more vivid
16 within hours of the shooting in '89 as opposed to today
17 just about eighteen years later?

18 A. That's fair to say, yes.

19 Q. Fresher in '89, right?

20 A. Yes.

21 Q. And is it fair to say that as a 26 year old
22 grown man getting paid to be a security guard, you
23 would have reported whatever facts entered into this
24 incident that you observed?

25 A. I can't say that I did and I can't say that I

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1 didn't.

2 Q. Was that not part -- would that not make
3 sense that that was part of your job?

4 A. Yeah, but the questions that were asked to me
5 was when we were at the theater what did I observe when
6 I was running towards theater one.

7 Q. I see.

8 A. That's what I answered to. They never asked
9 me about what took place, the argument, all that stuff
10 because I was by the ticket booth.

11 Q. So, for example, if the guy who shot the guy
12 had orange hair, you wouldn't volunteer that unless the
13 detective said did somebody involved have orange hair?

14 MS. MATTAWAY: Objection.

15 THE COURT: Sustained.

16 Q. You have to be asked about something --

17 A. They didn't ask me. I didn't say it.

18 Q. Okay. I'll move on. You said that at some
19 point Jonesy was present in that lobby during or in the
20 aftermath of the argument; is that correct?

21 A. That's correct.

22 Q. Now, the man you're calling Jonesy, that was
23 Craig Jones whatever title he's the chief of security
24 at that time, correct?

25 A. He was the most senior guy.

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1 Q. He was the head security?

2 A. Correct.

3 Q. And he was an armed guard, correct?

4 A. Yes.

5 Q. And in fact he was a moonlighting correction
6 officer?

7 A. They all were.

8 Q. Am I correct at that time of the -- ten guys
9 on duty, eight were armed security and two were
10 unarmed?

11 A. Correct.

12 Q. And Jones is one of the armed guys. He has
13 his correction's gun on him, right?

14 A. That's correct.

15 Q. Now, you indicated that you had heard -- you
16 said early on you couldn't hear, but then you heard the
17 part about I'm going for my gun, correct, in the lobby?

18 A. Yes.

19 Q. Now, am I correct, all of you security people
20 again at that time have radio to interact with each
21 other?

22 A. Correct.

23 Q. But you also said we're talking seconds, when
24 the man is allegedly trying to leave the theater saying
25 I'm going for my gun, other security guards were

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1 present, correct?

2 A. Correct.

3 Q. Were any of them armed?

4 A. They all -- all but two.

5 Q. The ones who are present to hear that?

6 A. Yes, they are.

7 Q. So there was an obvious argument. One of the
8 parties to the argument is saying I'm going for my gun
9 and you're telling us none of the armed security people
10 either followed him or kept an eye for his return; is
11 that correct?

12 A. That's correct.

13 (Continued on the next page)

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1 Q. That's correct.

2 Well, again, this is not said facetiously, why
3 in God's name were they armed, in case somebody stole
4 popcorn?

5 MS. MATTAWAY: Objection.

6 THE COURT: Sustained.

7 Q. But, legally, in other words, these guys are
8 all carrying pieces. Why are they carrying them?

9 THE COURT: Sustained. Sustained.

10 A. Because --

11 THE COURT: Don't answer.

12 Move on.

13 Q. You even said, and I'm quoting, "We were all
14 talking about the guy going for his gun," correct?

15 A. Yeah.

16 Q. And there were eight armed security guys on
17 duty?

18 A. That's correct.

19 Q. All moonlighting C.O.s?

20 A. That's correct.

21 Q. And nobody said, "Let's keep an eye on this
22 guy"?

23 MS. MATTAWAY: Objection.

24 THE COURT: Overruled.

25 You may answer that.

cm/g Mike Centeno - for People - Cross

1 Q. Nobody?

2 A. No. Jonesy was keeping an eye at the front
3 door, but the guy came back inside to get back into the
4 theater.

5 Q. You evaded him?

6 A. Okay, yes.

7 Q. With ten guards, many of whom were armed, now
8 the guy is going for a gun, nobody consistently kept an eye
9 on him?

10 A. Correct.

11 Q. Also, you tell us now -- we are getting ahead
12 in time -- as this person is exiting the theater, he's
13 holding the gun straight out at shoulder length, correct?

14 A. Correct.

15 Q. Again, do you recall being interviewed by the
16 detective in the early hours following this?

17 A. Yeah.

18 Q. And do you recall advising him that "I saw him
19 tucking a black firearm under his belt as he went out the
20 back door"?

21 A. Tucking it in his pants, not under his belt.

22 Q. All right.

23 So, on that point also the detective made an
24 error; is that correct?

25 A. He tucked it in his waistband.

cm/g Mike Centeno - for People - Cross

1 Q. Okay.

2 So, in other words, now we are going to dispute
3 whether or not the guy had a belt on; is that correct?

4 A. I'm not disputing anything.

5 Q. So, in any event, you believed that your
6 statement was correct then or now?

7 MS. MATTAWAY: I object.

8 A. Correct then and correct now.

9 THE COURT: Sustained. Don't say
10 anything.

11 Next question.

12 Q. I see.

13 Well, you even indicated, and it was a good
14 comical moment, you said, "I'm no hero." My point is, if
15 the person came out of the theater pointing the gun at your
16 eye level, you wouldn't have noted that to the detective?

17 A. I probably noted it. He didn't put it down. I
18 said, "We came out -- he came out of the theater, had the
19 gun eye level."

20 Q. And the cop overlooked noting that, in other
21 words?

22 THE COURT: Sustained as to that
23 commentary. Move on.

24 Q. Talking like two regular guys, what sounds more
25 scary --

1 MS. MATTAWAY: I object.

2 Q. -- the man is tucking the gun in his waistband
3 or pointing it at shoulder height? What is more
4 intimidating?

5 THE COURT: Sustained.

6 Q. By the way, what happened to you 18 years ago
7 that you couldn't be a witness then?

8 MS. MATTAWAY: Objection.

9 THE COURT: Sustained.

10 Q. Like, where did they find you 18 years later?

11 MS. MATTAWAY: Objection.

12 THE COURT: Sustained.

13 Q. You were out there somewhere.

14 By the way, I apologize if I had some fun with
15 you with reference to those pictures.

16 A. It's all well and good.

17 Q. And in your personal and/or social life, have
18 you gone to a number of theaters?

19 MS. MATTAWAY: I object.

20 THE COURT: Sustained.

21 Q. Do you go to the movies?

22 MS. MATTAWAY: I object.

23 THE COURT: Sustained.

24 Q. Let me ask you this: The corridors and the
25 counters and so on depicted in these photographs that are

1 now in evidence, but for knowing the subject of this case,
2 are those scenes any different from a dozen other theaters
3 you have been in?

4 MS. MATTAWAY: I object.

5 THE COURT: Sustained.

6 Q. You know, I wasn't being a comedian when I
7 asked you about those two theaters I'm familiar with.

8 MS. MATTAWAY: I object.

9 THE COURT: Is that a question?

10 Q. By the way, the person you saw leaving either
11 with the gun at shoulder length or tucked in his waistband,
12 be that as it may, did you observe that he was wearing a
13 cap at the time, a white cap?

14 A. I can't remember. All I remember is he came, I
15 saw the gun, he tucked it, I ducked. It happened in less
16 than three seconds.

17 Q. And then finally, just to revisit a point, you
18 said the person you see with the gun, the person involved
19 in the argument where the girlfriend is next to him, that
20 guy, you said that guy on one hand was light complected
21 like you; is that correct? That was your statement; is
22 that correct?

23 A. Yes, the guy with the girl.

24 Q. And you acknowledged, not in an offensive,
25 racial way, you're a Latino or Hispanic, correct?

1 A. Yes.

2 Q. Yet you acknowledge, you did report to the
3 detective that morning in '89 that it was a male black with
4 a dark complexion; is that correct?

5 A. I don't remember saying "dark," but to me, I
6 assumed -- I thought he was a black guy because I'm also
7 being mistaken for being black. People look at me, they
8 say, oh, no. I'm Latino.

9 Q. So back in '89 that was your reasoning, the guy
10 was similar complexion to me, so I'll call him black
11 knowing that I'm Latino; that's your reasoning, just so I
12 understand?

13 A. Pretty much at that time 18 years ago, the
14 early hours of the morning they asked me that question, it
15 was a black guy.

16 Q. You realize your role here is what they call a
17 witness? You realize that, right?

18 A. That's correct.

19 Q. You realize the measure of a witness is called
20 credibility, believability?

21 A. That's correct.

22 MS. MATTAWAY: I object.

23 THE COURT: Sustained.

24 Q. All this ethnic, racial stuff ain't too
25 credible, sir?

1 MS. MATTAWAY: I object.

2 THE COURT: Sustained.

3 I advise counsel to watch your commentary.

4 Q. Maybe we'll call you back after Centeno --
5 Serrano testifies.

6 MS. MATTAWAY: I object to whatever that
7 is.

8 MR. BRUNO: Good day. Thanks.

9 THE COURT: Anything further from the
10 People?

11 MS. MATTAWAY: May I have brief redirect?

12 THE COURT: Go ahead.

13 REDIRECT EXAMINATION

14 BY MS. MATTAWAY:

15 Q. Mr. Serrano, did you have --

16 A. Mr. Centeno.

17 Q. I'm sorry. Mr. Centeno. I apologize. He just
18 said Serrano.

19 Did you have any training from the Whitestone
20 Cinema people on how to respond to situations --

21 A. No.

22 Q. -- such as this?

23 A. No.

24 Q. Okay.

25 And prior to having this job, had you ever

1 acted in a security guard mode?

2 A. No.

3 Q. And did you have any training on how to report
4 things to law enforcement?

5 A. No.

6 Q. Do you remember how long you spoke to Detective
7 Serrano back in July 3, 1989?

8 A. Fifteen, 20 minutes at the most, I think, back
9 then. It was late. It was in the wee hours of the
10 morning, and they were just looking to take our statements
11 and get us out of there.

12 Q. All right.

13 Had you ever seen that man who pointed the gun
14 at you before?

15 A. No.

16 Q. And have you seen him since?

17 A. No.

18 Q. And were there other people around when you
19 were talking to Detective Serrano?

20 A. Yeah, there were a lot of witnesses that they
21 were taking statements from from the theater and other
22 security guards.

23 Q. Okay.

24 The pops that you heard that you said sounded
25 like M80s. Remember you said that?

cm/g Mike Centeno - for People - Recross

1 A. Yes.

2 Q. Can you recall what the pacing was of the pops?

3 A. It was like seconds apart, pop, pop, pop.

4 Q. Were either or any two out of the three close
5 in succession to each other, the first two or the last two,
6 or were they equal?

7 MR. BRUNO: Objection. Beyond the scope
8 of cross.

9 THE COURT: Sustained.

10 MS. MATTAWAY: Nothing further.

11 MR. BRUNO: May I proceed?

12 THE COURT: Go ahead.

13 RECROSS-EXAMINATION

14 BY MR. BRUNO:

15 Q. The D.A. just asked you if back in '89 you had
16 any guard training at the theater; is that correct?

17 A. Correct.

18 Q. Can I safely assume they didn't just hire you,
19 give you the gray slacks and the blue blazer and say,
20 "You're a guard"?

21 A. You said it. I didn't.

22 Q. What's your answer?

23 A. Yes, they handed me -- they needed somebody.
24 They handed me a gray blazer -- a blue blazer, gray slacks,
25 and said, "This is what you are going to do."

1 Q. And also, I'm not sure what it means, but you
2 weren't in a guard mode. What did that mean, by the way?
3 What does that mean?

4 MS. MATTAWAY: Objection.

5 Q. What's guard mode?

6 THE COURT: Sustained.

7 Q. What's guard mode?

8 THE COURT: Sustained.

9 Q. Do you know?

10 A. No. Do you?

11 THE COURT: Sustained.

12 Q. In any event, putting aside the lack of
13 training, putting aside the fact you weren't in a guard
14 mode, as a 26-year-old guy and now as a 44-year-old guy, do
15 you need any kind of specialized training to know what's
16 important in describing the participants in an apparent
17 murder?

18 MS. MATTAWAY: Objection.

19 THE COURT: Sustained.

20 Q. Do you?

21 THE COURT: Sustained.

22 Q. If I slug somebody right now in this courtroom,
23 aren't you going to report that it was a guy my age, my
24 complexion in a tan suit?

25 THE COURT: Sustained. Beyond the scope

1 of redirect.

2 Q. You need special training for all this, sir?

3 THE COURT: Sustained.

4 MR. BRUNO: Nothing further.

5 THE COURT: Anything further?

6 MS. MATTAWAY: No, sir.

7 THE COURT: You may step down. Thank you.

8 THE WITNESS: Thank you, your Honor.

9 (Whereupon, the witness was excused.)

10 THE COURT: Ladies and gentlemen, we are
11 going to break for the day. Again, I remind you do
12 not discuss the case among yourselves. Do not allow
13 anyone to discuss the case with you. Do not visit
14 the location. Keep an open mind. I'll see you back
15 here at 10 o'clock tomorrow morning. Enjoy the rest
16 of your day.

17 (Whereupon, the jury exits the courtroom.)

18 MR. BRUNO: May I be heard, your Honor?

19 THE COURT: Go ahead.

20 MR. BRUNO: Your Honor, putting it very
21 directly, this is the first of, I'm sure, many
22 witnesses who is outright lying about his statements
23 on the night of this incident 18 years ago. For that
24 reason, I must call Detective Serrano, the lead
25 detective, and possibly others.

1 My application is the following: The D.A.
2 has assured me off the record that she will produce
3 Detective Serrano. I am now asking you to direct her
4 that if she's not going to produce him, she must tell
5 me in good faith because I must produce him and,
6 again, I'm sorry to put it so bluntly, but this is
7 the first of I'm sure many witnesses who will
8 outright lie.

9 I'm not tipping my hand in saying a
10 pivotal issue here is practically every witness says
11 it's a black man. This witness fortunately made an
12 ass of himself, first acknowledging the comparison to
13 himself and then trying to wheedle into the fact that
14 that could be a black person. I don't follow his
15 reasoning, but I'm going into that to make the point.
16 I now ask you to make such a direction to the People.

17 THE COURT: Ms. Mattaway.

18 MS. MATTAWAY: Your Honor, this is only
19 the first day of trial, but I have to say that I'm
20 really disturbed by some of the language Mr. Bruno
21 uses to come out from the starting gate, calling one
22 of my first witnesses liars. His demonstration in
23 open court in front of these jurors berating my
24 witness, screaming at him, essentially saying, I
25 don't trust you, I don't trust you on the record,

1 words like, "All this ethnic, racial stuff ain't too
2 credible, maybe we'll call you back at another
3 trial," I just find these comments outrageous.

4 I ask at this time that the Court admonish
5 Mr. Bruno and please direct him not to make these
6 comments again in front of the jury on the record,
7 these, again, outrageous comments. It really should
8 not have a place in a courtroom. I really have to
9 hold myself back at the time he makes the comments
10 because I don't want to get into it with him in front
11 of this jury because they shouldn't have been made in
12 the first place, and I certainly don't want to add
13 fuel to the fire, but, I mean, the record speaks for
14 itself.

15 To jab a finger in open court at a witness
16 and say, "I don't trust you. I don't trust you" --

17 MR. BRUNO: He said, "Trust me."

18 MS. MATTAWAY: -- it's irrelevant.

19 THE COURT: One at a time.

20 MS. MATTAWAY: What Mr. Bruno thinks, how
21 he feels, his feelings of the witness' credibility,
22 he'll be free to argue all of that on summation, but
23 I really feel that he attacked my first civilian
24 witness. I'm really very disturbed by the racial
25 comments that he made and this comment about calling

1 you back at another trial, it really doesn't have a
2 place here in this courtroom, and I really would like
3 the Court to do something about it at this time.

4 MR. BRUNO: May I respond, your Honor?

5 THE COURT: No. I need you to respond to
6 his application, and then I'll deal with your
7 application.

8 MS. MATTAWAY: His application?

9 THE COURT: Let's deal with one issue at a
10 time.

11 MS. MATTAWAY: Okay.

12 THE COURT: Detective Serrano.

13 MS. MATTAWAY: I have reached out to the
14 man. I have had contact with the man. He said that
15 he would come down. He's 75 years old. I am trying
16 to work out the logistics with him. I have reached
17 out to him and told him we would like him down here
18 to testify and if he doesn't come down for me, that
19 Mr. Bruno wants him, but I have made contact with the
20 man. I have told him to come down. I don't have a
21 date yet. He said maybe next week. I know we are
22 not meeting the 3rd or 4th.

23 THE COURT: Ms. Mattaway, please reach out
24 to him again and get a definite date.

25 MS. MATTAWAY: Okay.

1 THE COURT: Now, Mr. Bruno, do you wish to
2 respond to the People's application?

3 MR. BRUNO: Your Honor, I don't want this
4 to get to the level of sandbox; however, the gauntlet
5 has been dropped. The D.A. engaged in personal
6 attacks. I'll respond in a limited way.

7 Most notably two minutes into this man's
8 testimony, the D.A. elicits the racial and ethnic
9 makeup of all the parties involved except the
10 shooter. Why? Because she knew that this man back
11 in '89 said he was a male black, dark complexion.
12 She actively evaded the most blatant conflict in this
13 man's testimony.

14 Also, your Honor, I'll state as an officer
15 of the court and, of course, this witness denied
16 everything, that's why I need Serrano, but in this
17 man's interview with Detective Serrano, the lead
18 detective, he first involves himself in this incident
19 as the apparent shooter is fleeing the theater. He's
20 never in the lobby.

21 Furthermore, for example, he puts himself
22 in the presence of his boss, Jonesy, which is Greg
23 Jones, the armed C.O. Relying upon your discovery,
24 Serrano's investigation, Jones is never in the
25 theater. He is assigned a patrol car patrolling the

1 parking lot.

2 So, yes, I'm the first to acknowledge I
3 use stronger than usual language in discussing this
4 witness because he made so many blatant, boldface
5 lies and the D.A., to an extent, facilitated it. To
6 prep a man to purposely evade the ethnic, racial
7 makeup of the alleged defendant because she knew it
8 would be a blatant lie, that's outrageous.

9 THE COURT: Okay. Contradictions
10 notwithstanding, commentaries have no place during
11 the questioning of a witness. Commentaries have no
12 place in front of a jury. To some extent, that rule
13 applies to openings and closings, depending on what
14 the comment is. The commentaries have to come to a
15 stop. What I'm going to classify as bickering with
16 witnesses, be it lightheartedly, has to come to a
17 stop.

18 I, as I always do, try to give both sides
19 some leeway, but don't misinterpret my quiet
20 demeanor; and the more this thing goes on that we
21 think we can ask a question any way we want at any
22 time we want and make a comment any way we want and
23 we can try to slip things in any way we want, the
24 more it goes on, the more restrictive I'm going to be
25 and I have no qualms about being restrictive for the

1 jury, and if the jury reacts to it and any party
2 suffers from it, my attitude is you brought it on
3 yourself.

4 We've got to bring all this under control
5 with the comments, with the way the questions are
6 asked. Like I said, I believe in giving people some
7 leeway, but I will crack down across the board.

8 It appears that my comments are being
9 directed at Mr. Bruno. So we are clear, my comments
10 apply to everybody in front of me in the courtroom.
11 One of my primary missions is to make sure everybody
12 gets treated the same and there is a fair trial.
13 Hopefully, I will not have to address this issue ever
14 again.

15 That being said, I assume there is nothing
16 else, I'll see everybody back here 10 o'clock
17 tomorrow morning.

18 MS. MATTAWAY: Thank you.

19 MR. BRUNO: Have a good evening, sir.

20 (Whereupon, the trial is adjourned to June
21 29, 2007.)
22
23
24
25

1 SUPREME COURT OF THE STATE OF NEW YORK
2 BRONX COUNTY : CRIMINAL TERM : PART 1

3 -----
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

IND. NO.
3825/2006

6 RICARDO JIMENEZ,

7 Defendant(s)

Trial

8 -----
9 June 29, 2007

10 851 Grand Concourse
11 Bronx, New York 10451

12 B E F O R E:

13 THE HONORABLE ROBERT TORRES,
14 JUSTICE.

15 A P P E A R A N C E S:

16 ROBERT T. JOHNSON, ESQ.
District Attorney, Bronx County
17 BY: LISA MATTAWAY, ESQ.,
DEBRA GUARNIERI, ESQ.
Assistant District Attorneys

18
19 PATRICK BRUNO, ESQ.
BRIAN WILSON, ESQ.
20 Attorneys for the Defendant

21 Also Present: MR. JOSEPH SHMULEWITZ, Intern

22
23 Catherine Mercorella,
24 Senior Court Reporter
25

1 (Whereupon, People's Exhibit Numbers
2 7-A through 7-E, photos on poster board, were
3 received in evidence and marked.)

4 (Whereupon, People's Exhibit Numbers
5 8-A through 8-F, photos on poster board, were
6 received in evidence and marked.)

7 THE COURT OFFICER: Place your left hand
8 on the Bible, raise your right hand and face the
9 clerk.

10 THE COURT CLERK: Do you solemnly swear
11 the evidence you give to the court and jury will be
12 the truth, the whole truth and nothing but the truth,
13 so help you God?

14 THE WITNESS: Yes.

15 THE COURT OFFICER: Please state your
16 first and last name.

17 THE WITNESS: Andrew O'Brien.

18 MS. MATTAWAY: Judge, can I talk to him?

19 THE COURT: Yes.

20 (Discussion off the record between the
21 D.A. and the witness.)

22 THE COURT: Ready? Jury, please.

23 THE COURT OFFICER: Jury entering.

24 (Whereupon, the jury enters the
25 courtroom.)

1 THE COURT CLERK: Case on trial continued.
2 All sworn jurors are present.

3 THE COURT: Good morning, jurors.

4 THE JURORS: Good morning.

5 THE COURT: The witness on the stand,
6 Mr. O'Brien has already been sworn in.

7 You may proceed.

8 MS. MATTAWAY: Thank you.

9 A N D R E W O ' B R I E N, having first been duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. MATTAWAY:

13 Q. Good morning, Mr. O'Brien.

14 A. Good morning.

15 Q. I'm going to stand back here, and I'm going to
16 ask you to please keep your voice up and talk into the
17 microphone so we can all hear what you have to say. Okay?
18 Thank you.

19 How old are you, sir?

20 A. Thirty-nine.

21 Q. Are you presently incarcerated?

22 A. Yes.

23 MR. BRUNO: I'm sorry to interrupt. The
24 witness was never identified in front of the jury.

25 THE COURT: I think I just said

1 Mr. O'Brien.

2 MR. BRUNO: Correct. Can we hear his
3 first name, most respectfully?

4 THE COURT: Why don't you give your full
5 name for the jury.

6 THE WITNESS: Andrew O'Brien.

7 THE COURT: You can move that microphone
8 over a little more.

9 MR. BRUNO: Sorry to interrupt.

10 MS. MATTAWAY: It's okay. Sure.

11 Q. For what crime, sir, are you presently
12 incarcerated?

13 A. Murder.

14 Q. Okay. Can you tell us the date it was
15 committed?

16 A. October.

17 Q. Approximately, the year?

18 A. October 1990.

19 Q. '90?

20 A. No, no -- yeah, '90, '90.

21 Q. And how long are you facing?

22 A. Eighteen more years.

23 Q. Okay.

24 Did you know somebody named Sean Worrell?

25 A. Yes.

1 Q. How did you know him?

2 A. We grew up in the neighborhood together.

3 Q. Did you know him by any kind of nickname?

4 A. Shaka.

5 Q. And I would like to direct your attention at
6 this time to July 3, 1989.

7 Did something happen on that date?

8 A. Yes.

9 Q. Okay. What happened on that date?

10 A. Well, that date me, Shaka and a couple of other
11 guys, we went to the Bronx movie theater, the Whitestone
12 movie theater in the Bronx and we got into an argument with
13 a guy and he ended up getting killed.

14 Q. Who ended up getting killed?

15 A. Shaka.

16 Q. What movie were you going to see?

17 A. Batman.

18 Q. Do you remember about what time you got to the
19 movie theater on July 3, 1989 or was it still July 2?

20 A. It was -- it had to be probably around 10:30,
21 11:00 or something.

22 Q. Do you remember what show you were going to
23 see?

24 A. As far as what? What you mean?

25 Q. What time?

1 A. Was it the last show or something?

2 Q. Yes.

3 A. I don't know what time the movie theater
4 closed, but it probably was the last show.

5 Q. All right.

6 And who were you with that evening?

7 A. I was with Shaka and Dean. You want the last
8 name, too?

9 Q. Sure.

10 A. Dean Beckford and another guy named Earl. I
11 don't know his last name.

12 Q. Did Dean Beckford have any kind of nickname?

13 A. Smiles.

14 Q. And did Earl have a nickname?

15 A. Patchy.

16 Q. What was your relationship to Patchy?

17 A. We was friends.

18 Q. And what was your relationship to Smiles?

19 A. Same thing, we was friends.

20 Q. Were you equally friends with Shaka, Smiles and
21 Patchy at that time?

22 A. Well, me and Smiles and Patchy was a little bit
23 more closer, but, you know, we was basically the same.

24 Q. When did you meet Shaka?

25 A. I knew him from when he was a kid, you know.

1 Like, I don't know, he probably was about 13, 14 or
2 something.

3 Q. That evening when you went to the movie
4 theater, did any of the four of you have weapons?

5 A. Yes.

6 Q. Who had weapons that evening?

7 A. Shaka had a weapon, Dean had a weapon and
8 Patchy had a weapon.

9 Q. Did you have one?

10 A. I had one, too, yes.

11 Q. So you all did?

12 A. Yes.

13 Q. All four?

14 A. Yes, but not in the movie theater, but we had
15 guns in the car.

16 Q. Okay. Can you tell us why you brought your
17 guns in a car to a movie?

18 A. Well, at the time, you know, we was running the
19 streets. We was into selling drugs and different things,
20 so we just always carried a gun.

21 Q. Was Shaka running with you, too?

22 A. Yes.

23 Q. Okay. When you went into the movie theater,
24 though, after parking the car, did anyone, if you know,
25 take their guns with them?

1 A. Well, as far as I knew, everybody took their
2 gun with them except me.

3 Q. Okay. Yours was in the car?

4 A. Right.

5 Q. Why didn't you take yours?

6 A. Well, because that day was windy and I had a
7 T-shirt on and I knew that sometimes they have undercover
8 cops in the movie theater, and when I got out of the car,
9 it was kind of windy and I said I could see the bulge in my
10 waist and I said, yo, these guys got guns. I don't need my
11 gun. I'll be all right. We all right. So, I left it in
12 the car.

13 Q. Do you remember what Shaka was wearing that
14 evening?

15 A. What he was wearing?

16 Q. Yes.

17 A. Not particularly, probably a short set or
18 something.

19 Q. Do you remember what he looked like?

20 A. Shaka?

21 Q. Yes. Describe him for us.

22 A. He was short, stocky, dark skinned. That's it
23 really.

24 Q. And tell us about Patchy; what did he look
25 like?

1 A. Patchy was a little bit taller than Shaka, dark
2 skinned. He had like a short afro. That's about it.

3 Q. And tell us what Smiles looked like.

4 A. Smiles was a little bit taller than both of
5 them. He wore glasses and kept his hair at that time like
6 in a box top.

7 Q. Okay.

8 A. Or flat top, whatever.

9 Q. What did you look like back then?

10 A. I was -- I guess I looked younger. I had a
11 little facial hair. My hair was like, you know, square,
12 like, you know, flat top or whatever. I wore glasses.

13 Q. Have you always worn glasses?

14 A. No, not always.

15 Q. When did you start wearing glasses?

16 A. About '89.

17 Q. About then?

18 A. Yes.

19 Q. All right.

20 How tall are you, sir?

21 A. Five seven and a half.

22 Q. About how much do you weigh?

23 A. Right now 165.

24 Q. Do you remember about what you weighed back
25 then in '89?

1 A. Probably -- I was probably 170, a little bit
2 more heavier, you know.

3 Q. Okay. And in terms of your height to Shaka's
4 height, what would be the difference?

5 A. I would say I was slightly taller than him.

6 Q. And I forgot if you have given me that, if I
7 asked you the question, what Smiles was wearing.

8 A. At the time I think he was wearing like jeans
9 and a jacket or something.

10 Q. Do you remember what Patchy wore?

11 A. Probably jeans and a T-shirt and a jacket, like
12 a spring -- you know, something you wear in the summertime
13 when it's a little windy.

14 Q. Did you see what Shaka did with his gun?

15 A. When he got out of the car?

16 Q. Yes.

17 A. No, but I presume that he had it in his waist.

18 Q. If you don't know, you can say.

19 A. No, I don't know what he did with it.

20 Q. Okay. Do you even know that he took his gun
21 with him?

22 A. No.

23 MR. BRUNO: Objection. Asked and
24 answered.

25 THE COURT: Overruled.

1 Next question.

2 Q. Did you see if Patchy took his gun with him?

3 MR. BRUNO: Objection. Asked and
4 answered.

5 THE COURT: Overruled.

6 MR. BRUNO: May we approach, your Honor,
7 with the reporter?

8 THE COURT: Step up.

9 Excuse us a moment.

10 (Whereupon, the following takes place in
11 camera, on the record, in the presence of the court
12 and counsel; the defendant is not present:)

13 MR. BRUNO: Your Honor, not making a
14 personal attack, but I want to try to nip this in the
15 bud. A lot of this occurred yesterday, and I was
16 pretty quiet about it.

17 What the D.A. does and has done is when
18 her witnesses give an answer that she doesn't want to
19 hear, thinks hurts her case, she asks it again three
20 minutes later. With all due respect to your Honor,
21 I'm sure you do recollect one of the earlier
22 questions and answers, sort of like preparation for
23 going into the theater, this witness made it clear
24 that all four men arrived with weapons; that when
25 they exited the vehicle, the three others kept their

1 guns because they have proper clothing on. This man
2 left his gun in the car because he had on a thin
3 T-shirt and it was windy and, again, you know, I
4 don't want it to be personal, but the D.A. is
5 cognizant that these guys went there that night
6 loaded for bear, and she's not going to hide it.

7 In addition, she is going to end up
8 embarrassing herself like she did yesterday with that
9 last witness because I have all the reports on this
10 guy. This guy tells us in the reports who had guns
11 and what kind of guns. They were packing heavy, a
12 .357 and a 9 millimeter, so I don't know why she's
13 doing this, and it shouldn't be allowed.

14 MS. MATTAWAY: I believe it's fair inquiry
15 of this witness.

16 MR. BRUNO: Asking 12 times?

17 THE COURT: To the extent that there may
18 be some effort to clarify, I'm going to allow these
19 questions. I assume that you have a question now
20 about whoever is next, Patchy, and then I assume we
21 are moving on.

22 MS. MATTAWAY: Of course. But what I am
23 just trying to get out from this witness is at what
24 point does he know that they have guns. Is it as
25 they are getting out of the car? Is a conscious

1 decision made? He has said why he doesn't have his
2 gun, but I don't know. Perhaps the first time he
3 sees that they brought guns with them was in the
4 theater.

5 THE COURT: To the extent that you're
6 clarifying that they kept their guns, I'm going to
7 allow it. If you intend to go beyond that, I'm going
8 to shut you down. Okay? I acknowledge that the way
9 he answered the first question you may want to
10 clarify to make sure.

11 MS. MATTAWAY: How does he know that they
12 have guns?

13 THE COURT: That they did keep their guns,
14 but, you know, if you go beyond that and keep asking
15 questions about these guns, I'm going to stop it. I
16 think it's information you already have on the record
17 and we need to move on.

18 MS. MATTAWAY: Okay.

19 (Whereupon, the following takes place
20 in open, on the record, in the presence of the
21 court, counsel, defendant and jury:)

22 MR. BRUNO: Your Honor, may I have a
23 recess so the reporter can transcribe what occurred
24 thus far? You're making it as though this needs
25 clarification. The man made it crystal clear. All

1 four exited the car with guns. Three retained it on
2 their person. The fourth one abandoned it in the car
3 because of a thin T-shirt. I'm sure you recall that.

4 With all due respect, how are you
5 tolerating this?

6 THE COURT: Based on your application now
7 and your excellent recall of what the testimony is,
8 you don't need it transcribed.

9 Let's go back.

10 (Whereupon, the following takes place
11 in open, on the record, in the presence of the
12 court, counsel, defendant and jury:)

13 THE COURT: You may continue.

14 MS. MATTAWAY: May I have the last
15 question read back, please?

16 (Whereupon, the requested portion was
17 read by the reporter.)

18 MR. BRUNO: I renew my objection. Asked
19 and answered.

20 THE COURT: My ruling stands. You may
21 answer that question.

22 A. No, I don't know if he took it or not, but I
23 presume -- I thought that he did.

24 THE COURT: If you don't know, that's your
25 answer.

1 Next question.

2 Q. Did you see Smiles take his gun?

3 A. No.

4 Q. Once the four of you got out of the car, where
5 did you go?

6 A. Well, we wasn't in the same car.

7 Q. Oh.

8 A. We was in two different cars.

9 Q. Who did you go with?

10 A. I was with Patchy and Shaka was with Smiles.

11 Q. Did both cars arrive at the theater at
12 approximately the same time?

13 A. No. Smiles and Shaka came first, got there
14 first.

15 Q. And about how long after they arrived did you
16 arrive in your car?

17 A. We got there, we got there probably about 15
18 minutes later, 20 minutes.

19 Q. Did you meet up with them?

20 A. Yes.

21 Q. How did that happen?

22 A. Well, we went into the lobby and we seen them
23 standing there.

24 Q. And then what happened?

25 A. Well, we was waiting for the movie to start and

1 it was like a long line on the concession stand, so I said,
2 I was saying, "Yo, who's gonna get the popcorn" and
3 whatever, whatever. So nobody -- everybody just didn't
4 want to go. I said, "Yo, Shaka, let's go over and get the
5 popcorn, man."

6 So, we went over there and we are waiting on
7 line for the popcorn and I'm talking to him about different
8 things, you know, B.S.'ing and whatever, and that's when
9 the individual approached us.

10 Q. And then what happened?

11 A. And he like -- I'm on the line, so Shaka is
12 standing next to me. So he said, "Yo, you on the line,
13 man?" like that, and like real, real aggressively. So,
14 Shaka looked up and was like, "No, no, no, I'm not on the
15 line." So he was like looking and I'm like, "Yo, what's
16 this guy's problem, man?"

17 So, me and the guy started arguing.

18 Q. And what was your argument about?

19 A. Just the fact that the way he came up and I'm
20 like, "Yo, what's up, man?"

21 He's like, "Yo, what's up?" boom, boom, boom,
22 and we just started arguing. That was it.

23 Q. Prior to this argument, did you have any
24 conversation with Patchy, Smiles or Shaka about who had
25 guns?

1 THE COURT: Sustained.

2 Q. When this man came up, where were Smiles and
3 Patchy?

4 A. They was like standing -- they like in the
5 background. They standing somewhere on the side. They are
6 not close to us because it was just me and him standing
7 there. Me and Shaka was the only one standing on the line.
8 They are like just waiting for us standing. You know, if I
9 could remember the movie theater correctly, it's like, you
10 know, they got like a game, they had like video games over
11 there, something off to the side. I don't know.

12 MS. MATTAWAY: At this time I would like
13 to show the witness People's 3-A through D.

14 Q. Take a look at that exhibit, Sir.

15 Do any of the photos in that exhibit look
16 familiar?

17 A. Yeah. Yes, they do.

18 Q. Okay. Which ones do you recognize?

19 A. Um, I recognize all of them.

20 Q. What do you recognize --

21 A. I mean, I can't recognize them as the specific
22 movie theater, but that's how most movie theaters look. I
23 don't know if that's what you're asking me.

24 Q. I'm asking if any of the photos look or depict
25 anything that you remember from this movie theater from

1 July 3, 1989.

2 A. Yeah. Well, I remember the concession stand.
3 The rug looks familiar. You know, it all looks familiar.

4 MS. MATTAWAY: You could take it back.

5 Q. And how far up on the concession stand line
6 were you when the argument began?

7 A. I'd say we was pretty close to it because we
8 been standing there for a little while, so we was moving up
9 in line and everything, so.

10 Q. And what words were said?

11 A. He was like, he came and he said, "Yo, what's
12 up, man? You on the line, man?" like, you know, real
13 aggressive, and Shaka, like he looked at him and he's like,
14 "No, no, I'm not on the line," but the guy was like looking
15 and I'm like, "Yo, what's his problem, man?"

16 And then me and him was looking at each other.
17 He's like, "What's up?" And I'm like, "What's up, man?"
18 And we started arguing.

19 Q. What you said was you started arguing. What
20 did you argue about?

21 A. It was basically, "What the F you looking at?"
22 "Yo, what's up?" boom, boom, boom. It wasn't really about
23 nothing.

24 Q. What do you mean by "boom, boom, boom"?

25 A. Well, you know, we started tossing around, "Yo,

1 what's up, man?" boom, boom. "Yo, what the F you want to
2 do?"

3 I remember us yelling. I don't know the exact
4 words, but I remember us yelling and arguing, you know, and
5 when -- before he walked off, that's when I said, "Yo" --
6 excuse my language -- I said, "Yo, you pussy, man."

7 He's like, "What?" boom, boom. And he turned,
8 he said, "Yo, man. All right, I'm gonna get my gun." And
9 I was like, "Yo, go ahead. Go ahead." boom, boom, because
10 I'm mad now and I'm thinking, all right, you know, we all
11 right in here, boom, boom, boom. So, and he walked out.
12 That's when he walked out of the movie theater.

13 Q. What do you mean when you keep saying, "boom,
14 boom"?

15 A. Well, I'm trying to add lib, you know, curses
16 in there. I don't know, you know. I don't know the
17 specific curses, you know, mother F'er or this, that, you
18 know, whatever it was.

19 Q. You do remember calling him a pussy, though?

20 A. Yes.

21 Q. And what did you mean when you just said, "We
22 were all right"?

23 A. Well, you know, I figured there is four of us.
24 There is only one guy, you know. These guys, you know,
25 they strapped or whatever. So, I mean, we should be all

1 right, you know.

2 Q. Did you notice if this man was with anybody?

3 A. No, at the time I didn't notice he was with
4 anybody.

5 Q. Okay.

6 What did the man look like?

7 A. Well, he was like my complexion, a little bit
8 taller than me. He was a little like slimish. That's
9 basically it.

10 Q. And after he said that he was going to go get
11 his gun, did you see where he went?

12 A. Well, I know he went through the door.

13 Q. Which door?

14 A. Through the lobby door.

15 Q. You're making a gesture with your finger.

16 A. I'm looking at the --

17 Q. At People's 3?

18 A. Yeah, I'm looking.

19 Q. Is there a specific photo on People's 3 that
20 you're pointing to?

21 A. These doors right here.

22 THE COURT: Indicating People's 3-B.

23 Q. 3-B?

24 A. Yes.

25 Q. The front doors of the theater?

1 A. Yes.

2 Q. Did you see him leave through the front?

3 A. Yes. He went through the doors.

4 Q. Okay. How far, if at all, past the front door
5 could you see him?

6 A. Well, after he went out the front door, I
7 didn't see exactly where he went because like then we went,
8 we still bought the popcorn and everything. We was like,
9 "Man, forget it," because Beckford and Patchy, they was
10 like, "Yo, forget that dude. Forget all that."

11 So, I went and bought the popcorn and left. I
12 didn't even know he was gonna come to the same movie
13 theater. They was like, "Yo, forget that dude, man."

14 Q. And which movie theater did you go to? Do you
15 remember?

16 A. We ended up going to the Batman movie.

17 Q. And do you remember where the theater was?

18 A. I don't know if I could say I remember where it
19 was. I know we had to walk down a short hallway and then
20 we went through the doors.

21 Q. Okay. And when you got to the movie theater,
22 do you remember where you took a seat?

23 A. Yes.

24 Q. Where did you sit when you first got to the
25 theater?

1 A. When we first got to the theater, we went all
2 the way down to the bottom, sat down like, I don't know,
3 four or five, about four or five rows from the movie
4 screen.

5 Q. Who is "we"?

6 A. Me, Patchy and Smiles and Shaka.

7 Q. You all four sat together?

8 A. Well, me and Shaka sat in two seats, and they
9 sat in the row -- I think it was the row behind us.

10 Q. Is there any reason why you didn't sit in the
11 same row?

12 A. Well, because, I mean, it's a big movie
13 theater, you know, and you just sat in different rows.
14 That's it. You know, like they right behind us, so we can
15 still conversate or whatever, so.

16 MS. MATTAWAY: Okay. At this time I would
17 like to show the witness People's 7-A through E
18 already in evidence.

19 THE COURT: Members of the jury, this
20 exhibit was premarked and admitted into evidence
21 before you came out. This is in evidence.

22 Q. Take a look at that exhibit board, sir.

23 A. All right.

24 Q. Are you able to see on this exhibit the seats
25 that you took with your friends on July 3, 1989? Can you

1 see them in any of these photos?

2 A. Well, it looks like it could be on this side,
3 but I have to see. Is this the movie theater? Is this the
4 movie screen right here? Because we was sitting right
5 close to it.

6 THE COURT: Pointing to 7-A.

7 Q. I'll show you People's 8. This is 8-A through
8 F already in evidence.

9 THE COURT: Members of the jury, this
10 exhibit also was marked and admitted into evidence
11 prior to you coming into the courtroom.

12 A. Somewhere, somewhere over here, if I'm not --
13 see, we are sitting on -- let me see.

14 THE COURT: The record should reflect the
15 witness just pointed to 8-F.

16 A. I think it's the right-hand side -- no, it's on
17 the left side. We were sitting on the left side on the
18 small -- on these small -- you know, the section that's
19 smaller.

20 Q. Yes.

21 A. We were right up on the movie screen.

22 MS. MATTAWAY: Okay. I'm going to give
23 the witness a red pen.

24 Q. Can you just indicate directly on any photo,
25 any photo you think is helpful, to demonstrate what you're

1 describing? Just make an "X" where you think you remember
2 you were sitting. If you can't remember, you can't
3 remember.

4 A. I'm trying to remember if it was my right or my
5 left when I come in. It was on the -- it was on the
6 left-hand side, so where you come down, I don't think you
7 have it in this picture. I think it's on the other side.

8 Q. Okay. Would you like to see the other board?
9 Perhaps that would be helpful, People's 7.

10 A. Yeah, yeah, we was sitting on the other side.

11 Q. So, it's not shown in the photographs?

12 A. I think it's on the other side, if I'm not
13 mistaken.

14 Q. All right.

15 So, what happened after you were sitting in the
16 theater?

17 A. So, we are sitting there and the lights are
18 still on and everything and peoples is coming into the
19 movie theater. So when I -- when one of them looked,
20 either Patchy or Smiles looked up and seen, he said, "Yo, I
21 think that's that dude right there." And he came in, and
22 he sat down somewhere at the top. As soon as you come
23 through the doors on the other side, it's like there's a
24 row right there on the big side. So, I like looked and I
25 like turned around and next thing you know like he went

1 back through the doors, right? And we're sitting there.
2 He came down, came all the way down, and he said, "Yo, when
3 the movie is over, it's me and you" and he walked off.

4 Q. He said that to who?

5 A. To me. See, his main problem was with me; it
6 wasn't really with Shaka. His main problem was me because
7 I was the one that was giving him all the mouth.

8 Q. Okay. And was he alone when he came down?

9 A. When he came down, yeah, he was alone when he
10 came down.

11 Q. Did you recognize him when he came back in?

12 A. Yeah, yeah. I knew who he was.

13 Q. Had anything changed about his appearance from
14 when you had first seen him out at the concession stand and
15 this time?

16 A. No, not really.

17 Q. Okay. And when he said those words to you,
18 when it's over it's you and me or something?

19 A. Yeah.

20 Q. What, if anything, did you do or say in
21 response to that?

22 A. I didn't say nothing to him at first, and he
23 walked off. He walked off and Patchy was like, "Yo, what's
24 this dude trying to do?"

25 So then I looked at Shaka and I told him, I

1 said, "Damn, yo, I left my gun in the car."

2 He said, "Yo, why did you do that?"

3 I said, "Yo, because the bulge."

4 He said, "Yo, this dude is bluffing." And
5 that's when I got up, Patchy got up, and said, "Yo, what's
6 up with this guy?" And he got up and started walking out,
7 and I followed behind him.

8 Q. Patchy went first?

9 A. Yes.

10 Q. And then what happened?

11 A. He like got up and he walked around, around the
12 aisle and went up this way, and I was walking, I'm walking
13 with him, but I like walked past him because I'm getting
14 kind of like hyper.

15 Q. Past Patchy?

16 A. Yeah. So I walked past him, and it's like when
17 I got -- when I got close to the doors, I seen this homeboy
18 seen me coming, and he was like, "Yo, what's up? You got a
19 gun?" And that's when he pulled out, and I said, "Yo," I
20 said, "Yo, he got a gun. He got a gun."

21 Q. Who were you saying it to?

22 A. I was saying it to Patchy, "Yo, he got a gun.
23 He got a gun." Patchy is looking at me like, Why you
24 acting like that? The way he looked at me, like, yo, he
25 thought I had a gun on me, too. I didn't tell him. I told

1 Shaka I didn't have my gun on me.

2 Q. You did not tell Patchy you were not armed?

3 A. I didn't tell Patchy I wasn't armed because I
4 was kind of like, you know, kind of embarrassed, you know,
5 he was like, Yo, what's the matter? You scared to carry a
6 gun?

7 So, anyway, when I say, "Yo, he got a gun, he
8 got a gun," and next thing you know the shooting just --
9 they started shooting. He just started shooting, boom,
10 boom. That's like when I ducked. I felt I got hit or
11 grazed or whatever, and that was it.

12 Q. At the time you first noticed this person pull
13 a gun out --

14 A. Yeah.

15 Q. -- how far away were you standing from him?

16 A. Probably, probably like from a little just
17 slightly close where you are from where I'm at now.

18 Q. From where maybe the brown chair is?

19 A. Yes.

20 THE COURT: Approximately 16 feet.

21 MS. MATTAWAY: All right.

22 Q. And where is Patchy?

23 A. Patchy is like, he's like a little bit behind
24 me. So when I run back, I like catch up to him. I'm like,
25 "Yo, he got a gun." He's basically standing just a little

1 bit close to me.

2 Q. Where are you standing at this time?

3 A. I'm standing in the aisle and I'm standing --
4 like Patchy is behind me. I'm standing right here.

5 Q. Were you in the same aisle as the man with the
6 gun?

7 A. Yes.

8 Q. And in terms of the screen and where the back
9 of the theater is, who was standing where?

10 A. Well, Shaka -- I mean Patchy is standing like
11 close to me, and that's when Shaka was like walking up. He
12 was coming up behind us.

13 Q. Is the man with the gun in the aisle closer to
14 the back of the theater or the screen?

15 A. No. He's closer to the back of the theater.

16 Q. All right. And where are you? Are you closer
17 to the back of the theater or closer to the screen?

18 A. Well, compared to where he's at, I'm closer to
19 the back -- to the screen, but we are all up there. Like,
20 you know, we're not down at the bottom of the movie
21 theater; we're on the top.

22 Q. Had you left your seat to go towards the back;
23 is that what you're telling us?

24 A. No. I left my seat to go -- yeah. You mean
25 the back? You mean to exit, towards the exit? Is that

1 what you're saying?

2 Q. To the back of theater which would eventually
3 lead out to the concession stand as opposed to the screen.

4 A. Yes.

5 Q. That's what I'm trying to understand.

6 A. Yes.

7 Q. All right.

8 In terms of which aisle, based on any of the
9 photos that have just been shown to you, are any of the
10 photos helpful in describing which aisle you're talking
11 about?

12 A. Yes. I think one of the aisles was the one
13 that we was in, but it wasn't the aisle that we were
14 sitting in. The first time you asked me was it --

15 Q. Okay. It's a different aisle than the aisle
16 you had sat in; is that what you're telling us?

17 A. Yes.

18 MS. MATTAWAY: Can the witness be shown
19 both People's 7 and 8?

20 THE COURT OFFICER: Together?

21 MS. MATTAWAY: Yes, the two big boards.

22 Q. Do you need either of those boards to describe
23 the aisle you're talking about this happening in?

24 A. This aisle right here.

25 Q. Which photo are you talking about?

1 A. E.

2 THE COURT: That would be 8-E.

3 MS. MATTAWAY: 8-E. Can we flip it? All
4 right.

5 A. This one right here.

6 Q. That's the aisle you're talking about?

7 A. Yes.

8 Q. Okay. Using the red pen -- do still have it,
9 the marker?

10 A. I don't know what I did with it.

11 THE COURT OFFICER: I have it.

12 Q. Can you please make an "X" for where you saw
13 the man with the gun standing in any photo that's relevant.

14 A. Right here. You said an "X"?

15 Q. Yes.

16 (The witness has complied.)

17 Q. Which photo did you mark, sir?

18 A. E.

19 Q. You marked E, okay.

20 And do you see the approximate spot where you
21 remember standing with Patchy in any of the photos?

22 A. Damn. Where the hell is that "X" at? I can't
23 see. I don't think this is very good.

24 Q. Would you rather a heavier marker? You want a
25 black magic marker?

1 THE COURT: Black will not work. Do you
2 have a light color?

3 MS. MATTAWAY: I have orange and pink.

4 THE COURT: That might work.

5 A. A different color probably.

6 Q. Okay. Try pink.

7 A. No, this is the same thing.

8 (The witness has complied.)

9 THE COURT: Can you do me a favor? Next
10 to that last "X" you marked, the last one, the one
11 you just did, sir, just put a little number "2" like
12 that. We have two "X"s there. We want to make sure
13 we know the difference.

14 (The witness has complied.)

15 THE COURT: Thank you.

16 Q. Are you able to, using the marker, write "A" --
17 and Patchy was Dean Beckford?

18 A. No, that's Earl.

19 Q. That was Earl?

20 A. I don't know his last name.

21 Q. Just make an "E" and an "A" for where the two
22 of you were, please.

23 A. The first "X" you told me to mark where I was
24 at.

25 Q. The first "X" is where the man with the gun is.

25 MS. MATTAWAY: The record should reflect

1 the witness has stood up and held his arm out here in
2 open court and made a motion with his fist as if he's
3 holding a gun.

4 Q. Did he say anything at that time?

5 A. No. All I know what he said, he said, when I
6 seen him with a gun, he said, "What's up? You got a gun?"
7 Like he asked me if I had a gun. Like, "Yo, what's up,
8 man?" And that's when he pulled out the tool -- I mean the
9 gun, and that was it.

10 Q. All right.

11 What else, if anything, was going on in the
12 theater at this time?

13 A. What else? What you mean?

14 Q. Did anyone else -- was anybody saying anything
15 else or moving or anything?

16 A. Well, it was so quick. There was really not
17 too much to say. I know Patchy was standing here and Shaka
18 was coming up.

19 Q. How do you know Shaka was coming up behind you?

20 A. Because I seen. Like, I turned a little bit
21 and I seen, because I got to turn this way to turn to
22 Patchy. I'm like, "Yo, he got a gun." I'm trying to move
23 past him, because I know Patchy has a gun on him. I'm
24 trying to get behind him. So I'm looking at him like this,
25 and I seen Shaka coming up, you know.

1 Q. What was Shaka doing?

2 A. When I seen him, he was just walking up, you
3 know.

4 Q. Did you see where he had come from?

5 A. Well, he was sitting next to me before I got
6 up, so he had to come from where we were sitting at.

7 Q. How far behind you and Patchy was Shaka down
8 the aisle?

9 A. Just a couple of feet.

10 Q. Did he have anything in his hand at the time
11 you saw him?

12 A. At the time I didn't see anything in his hand.

13 Q. And did he say anything to you as he was coming
14 up?

15 A. No. When that happened, I seen him, and next
16 thing you know the shooting started, so I had to dive one
17 way and Patchy dived the other way and that's it, you know,
18 the shooting started.

19 Q. All right. Who shot first?

20 A. Who shot first? Well, I thought the guy shot
21 first.

22 Q. The guy you talked about?

23 A. Yeah. I thought he shot first because when I
24 heard the shot, I know the last person I seen with a gun
25 was him.

1 Q. Right.

2 A. So once I heard the shots, you know, I'm trying
3 to grab the floor. I'm not worrying about who is -- you
4 know, I seen the guy pointing a gun. Now bullets is
5 flying, you know, so I tried to hit the floor.

6 Q. How many shots did you hear before you hit the
7 floor?

8 A. Before I hit the floor -- well, from the first
9 shot, that's when I'm going for the floor, but, I mean,
10 it's hard to explain. It's almost like you feel like
11 you're moving in slow motion, but while I'm going towards
12 the floor, you're hearing boom, boom, boom and I felt like,
13 like in between I felt like a burning sensation on my side
14 and my arm. I'm thinking I got shot. You know, I'm
15 thinking, you know, I'm shot.

16 So, by the time I hit the floor, it's like
17 people just running around screaming, you know, jumping
18 over you or whatever so.

19 Q. And did you see what Shaka was doing?

20 A. Did I see what he was doing?

21 Q. Yes.

22 A. I didn't see what he was doing.

23 Q. Did you see what happened to him?

24 A. But I looked back and seen, but what happened
25 was that when we got back up, Patchy started chasing after

1 the guy, and I'm going with him. So I seen, I seen him on
2 the floor, but I didn't think, I didn't think he was dead
3 or anything. I just thought probably he dived on the floor
4 like everybody else.

5 So I jumped up, and we started chasing the guy
6 -- right? -- and we went into the hallway and, you know,
7 they had like people running around and everything, so like
8 they had security and everything coming at us. So like the
9 guy slips through the exit and we trying to follow the guy.
10 You know what I'm saying? Because now I know Patchy has a
11 gun on him, and he's trying to follow the guy and I'm going
12 behind him like, "Yo, let's get this guy," whatever,
13 whatever.

14 So, I'm running behind him, so we end up
15 outside with people spilling out and whatever, whatever,
16 and that's when Beckford came out -- Dean came out and told
17 us, "Yo, man," he said, "Yo, yo, man, I turned Shaka over,
18 man. He's dead, man. Let's get out of here."

19 And I'm like, "What?"

20 He said, "Yo, the homeboy's gone, man." And
21 that was it.

22 (Continued on the next page.)
23
24
25

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1 Q. Let me go back to the time in the theater
2 when the shooting happens. Okay?

3 A. Yes.

4 Q. Did you see anyone else shoot besides the man
5 with the gun?

6 THE COURT: Sustained. Not his
7 testimony.

8 MS. MATTAWAY: Okay.

9 Q. Did you hear any sounds behind you?

10 THE COURT: At what point in time?

11 MS. MATTAWAY: At the time of the
12 shooting.

13 MR. BRUNO: Objection to the form of the
14 question.

15 THE COURT: Sustained. Be a little bit
16 more specific.

17 Q. Well, you said you heard boom, boom, boom,
18 correct?

19 A. Yes.

20 Q. In which direction did you hear the booms
21 coming from?

22 MR. BRUNO: Objection, your Honor.

23 THE COURT: If he could answer that
24 question, I'll let him answer it.

25 A. What did you say?

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1 Q. In which direction did you hear the booms
2 coming from?

3 A. Well, I thought that it was coming from in
4 front of me, you know.

5 Q. And why did you think that?

6 A. Because I seen him with the gun. And I mean
7 who else is going to -- I'm saying to myself who is
8 going to be shooting. He pulled out the gun. Next
9 thing you know, I hear shooting.

10 MR. BRUNO: Objection as to his
11 thoughts, your Honor.

12 THE COURT: Strike the last part of the
13 answer. The only part of that answer that stands
14 is he thought it was coming from in front of him.
15 Next question.

16 Q. After which shot -- yeah, after which shot
17 did you feel the burning sensation?

18 A. I believe it was at the second one.

19 Q. The second one?

20 A. Yes.

21 Q. Are you able to describe for us how or in
22 what movement you felt the grazing or the burning
23 sensation?

24 A. Well, I know like -- I like jumped out the
25 way and did like this and I just felt like something.

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1 Q. Can you stand up and show us on your own
2 body?

3 A. When I went to dive I felt like something
4 just like like something just real hot just skim past
5 me through my sides and it hit my arm boom, boom, like
6 that. That's when I, you know, then I fell.

7 THE COURT: Indicating the left torso
8 toward the left bicep.

9 Q. Did you feel the sensation on your torso and
10 your bicep at approximately the same time?

11 A. Well, I felt it when it hit my side and then
12 a little bit later then, you know, like milliseconds, I
13 don't even know how to describe the time to anybody,
14 boom. It happened so fast. It hit my side first then
15 my arm later.

16 Q. Did it feel like it was from one shot?

17 MR. BRUNO: Objection, your Honor.

18 THE COURT: Sustained.

19 Q. Could you tell at the time you were shot
20 where Shaka was?

21 A. Can I tell where he was at?

22 Q. Yeah.

23 THE COURT: Sustained to the form of the
24 question.

25 Do you know where he was at that time?

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1 Q. Do you know where he was?

2 A. He was behind me.

3 Q. How was your body positioned at the time you
4 were shot?

5 A. Positioned?

6 Q. Were you facing the man? Were you turning?
7 Were you down? What were you doing?

8 A. I was facing him, but then, you know, when
9 you dive you just, it just happened so fast.

10 Q. And on which side were you hit?

11 A. On my left.

12 Q. And at the time that you were down, did you
13 look to see your injuries at that time?

14 A. Well, not really. I just felt it and I was
15 like, like I was saying okay I'm shot, but I don't feel
16 that bad. I could still move because that's when I had
17 to jump up and everything and I was running behind
18 Patchy and everything. I said "man I can't be that bad
19 if I can -- I could still walk, you know."

20 Q. The last time you saw Shaka, in what position
21 was he?

22 A. He was on the floor behind me.

23 Q. And was he face down or face up when you saw
24 him?

25 A. It looked like he dove down, you know, like

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1 had his head, his face facing the ground.

2 Q. Face down. And was the face, if you
3 remember, was it down in the aisle or in the seat area?

4 A. To me it was in the aisle.

5 Q. Was the face down pointing to the screen or
6 up pointing towards the back of the theater of the
7 aisle?

8 A. Pointing towards the back.

9 Q. And was anyone over Shaka or near him when
10 you saw him?

11 A. No, over him, no.

12 Q. Okay. Or in close proximity to him?

13 A. You have people jumping up and running so
14 they had people all over the place.

15 Q. Were you able to see any type of fire or
16 muzzle flash from the man's gun?

17 A. Yes, because it was coming forward.

18 Q. And what color was it?

19 MR. BRUNO: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. How many flashes did you see?

22 A. I saw before I dive, I saw one flash but then
23 when I dived like it was a flashing, but I didn't
24 really look at it because the movie was just -- lights
25 had just went out so you could see the flash probably

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1 reflecting off the wall. Whatever it was. I don't
2 know.

3 Q. Was the movie started?

4 A. It was just starting, like I guess the
5 opening credits was on or whatever.

6 Q. And one moment please. Was there any pause
7 or can you tell us the time difference between the
8 shots?

9 A. No. There was like a quick succession, just
10 boom, boom, boom. There was really no pause or nothing
11 like that.

12 Q. Okay. Do you see the man with the gun who
13 fired in the theater on July 3rd, 1989 here in the
14 courtroom today?

15 A. Yes.

16 Q. Can you point to him and tell us what he's
17 wearing today?

18 A. Some type of stripped shirt and jeans.

19 Q. Can you point to him please.

20 THE COURT: Indicating the defendant.

21 Q. Is that the same man who you called a pussy
22 back at the concession stand earlier that night?

23 A. Yes, yes.

24 Q. When was the last time you saw him?

25 A. The last time I seen him personally?

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1 Q. Yeah.

2 A. In the movie theater.

3 Q. When you and Patchy ran out after --

4 A. Yeah.

5 Q. Did you see him where he went?

6 A. I seen him going through the exit.

7 Q. Through the doors?

8 A. Yes.

9 Q. Did you go through the door and catch up to
10 him or what?

11 A. Well, what happened as soon as he went
12 through the door, security and everything came this way
13 and Patchy had to like dip his gun in real quick so we
14 started saying he went that way. We started pointing
15 outside because we didn't want them -- he didn't want
16 them to bust him with the gun. We said the guy went
17 that way. They started chasing after him and we kind
18 of went behind him and went outside in the movie
19 theater.

20 Q. One moment. I'd like to show the witness
21 this Exhibit 4A through D.

22 Do you recognize any photos in that exhibit?
23 Do any of them approximately reflect anything you've
24 testified about, sir?

25 A. Well, this looked like exit doors. As soon

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1 as you come out of the movie theater.

2 Q. Which photo, sir?

3 A. What is it, C?

4 THE COURT: 4C.

5 Q. Okay. Did you go through that exit door at
6 that time when you told the guards he went that way?

7 A. We like waited a few minutes and then we went
8 out through the same exit.

9 Q. Thank you. You could take it back. After
10 Smile spoke and he told you about Shaka, did you ever
11 go back into the theater to take a look at Shaka?

12 A. No, no.

13 Q. Where did you go?

14 A. Well, we got in the car and we drove back to
15 Brooklyn.

16 Q. Is Brooklyn where you had originally started
17 out that evening?

18 A. Yes.

19 Q. Did there come a time that you got a chance
20 to examine yourself and look to see if you were
21 injured?

22 A. Yes.

23 Q. Tell us about that?

24 A. Well, while I was in the car, I said yeah man
25 I think I got glazed. I had blood and everything.

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1 Patchy was playing doctor touching it and he said, "do
2 you feel any pain here, there?" I said "I don't think
3 there was any bullets." It was just like a big piece
4 chunk of meat cut out right here. So we drove back to
5 Brooklyn and we went to a friend's house and we told
6 him what happened and he got some -- he had some gauze
7 and some cheap tape and he taped it up and that was it.

8 Q. Do you still have any scars on your body from
9 that incident?

10 A. Yes.

11 Q. Could you show us?

12 MR. BRUNO: I would object at this time,
13 your Honor.

14 THE COURT: Sustained.

15 Q. After you were treated by this friend who
16 took care of your injuries, did you ever go to a
17 hospital for treatment?

18 A. No.

19 Q. Okay. And did you, by the way, did you get a
20 chance to examine your arm?

21 A. What you mean, the injury?

22 Q. Yeah.

23 A. Yeah. Both of them. I looked at both of
24 them.

25 Q. And did you get any treatment for your arm?

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1 A. No.

2 Q. Just the torso?

3 A. Just the torso -- no, no, no. They treated
4 it. Me and my friends. We treated ourselves. We used
5 alcohol, whatever, gauze, taped it up.

6 Q. What did your arm look like?

7 A. Well --

8 MR. BRUNO: Objection.

9 THE COURT: Sustained. This whole line
10 of questioning. Not relevant to this trial.

11 Q. Okay. When, if you remember, was the first
12 time after this incident happened that you felt
13 compelled to tell somebody about it?

14 MR. BRUNO: Objection.

15 THE COURT: As to the phraseology of
16 that question, sustained.

17 Q. Do you remember the first time you told
18 anyone in law enforcement about what happened?

19 A. Yes.

20 Q. And when was that approximately?

21 A. That was in -- that was in -- I think it was
22 '96.

23 Q. Okay. And do you remember how you first
24 decided to tell somebody about this? Did you write
25 them? Did you call someone? What happened?

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1 A. Well, I was being -- I was being questioned
2 by federal agents and they asked me, you know, of
3 certain things that I knew about and this was one of
4 them.

5 Q. Is there any reason why you kept your silence
6 from '89 to '96?

7 A. Well, yeah, there is a reason. You know, one
8 of the reasons is that, you know, us living in the
9 street first of all you really didn't cooperate with
10 the police officers. If anything, if you had a
11 problem, you handled it yourself. You know, that was
12 one of them. And second of all -- that was basically
13 it, you know.

14 Q. After you first told someone in '96, when was
15 the first time you remember speaking with somebody?

16 A. I told somebody in '96 and then I spoke to I
17 think I spoke to Ms. Pheifer the Cold Case Squad in
18 '98.

19 Q. When you say the Cold Case Squad, do you mean
20 the New York City Police Department Cold Case Squad?

21 A. Yes.

22 Q. The first law enforcement person that you
23 spoke to in '96 though about three years earlier, was
24 that person from the NYPD?

25 A. No, that person was from the FBI.

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1 Q. Okay. You spoke to a Ms. Pheifer in the NYPD
2 Cold Case Squad?

3 A. Yes.

4 Q. Did you reach out to her or were you
5 contacted?

6 A. Well, somebody referred her to me and they
7 gave me her number and I called her.

8 Q. And you had a conversation with her?

9 A. Yes.

10 Q. And after you had a conversation with her in
11 '99, do you remember the first time you spoke to
12 someone in law enforcement about that?

13 A. I think I said it was '98.

14 Q. '98, I apologize.

15 A. After that I think it was the same year or
16 the year after that I spoke to Detective Stradford.

17 Q. All right. And how many times since you
18 spoke to Detective Stradford, in approximately 1999,
19 since then have you spoken to Detective Stradford?

20 A. How many times? I spoke to him about -- I
21 don't know, ten times, fifteen times over the years.

22 Q. Okay. When was the first time that you
23 remember ever meeting me?

24 A. I met you -- when was it? What year is this,
25 2007? I think it was 2006 or late 2005.

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1 Q. And after that meeting when was the next time
2 you saw me again?

3 A. Today.

4 Q. What is your understanding of what if
5 anything I can or will do for you in exchange for you
6 testifying here today for us?

7 A. Well, my understanding is that you'll just
8 tell the Federal prosecutors that I cooperated with
9 ya'll and that's it.

10 Q. Are you a sentenced prisoner?

11 A. Yes.

12 Q. And you said you have 18 years to go?

13 A. Yes.

14 Q. Are you presently doing this for anybody
15 else?

16 A. Doing what? What I'm doing here?

17 Q. Yes.

18 A. I'm basically doing it just because it's a
19 lot of different reasons.

20 Q. Why are you doing this?

21 A. Well, one is that I felt guilty because, you
22 know, I kind of like started the argument with the guy,
23 with the person.

24 Q. At the popcorn line?

25 A. I started an argument. Basically I felt like

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1 I got the guy killed.

2 Q. Shaka?

3 A. Yes. I got Shaka killed and I never really
4 tried to help his family, you know. And second is that
5 because I cooperated with the Federal Government and
6 they said that my agreement that I had to cooperate
7 with all law enforcement and everything else and so
8 that's the reason why I started talking to the New York
9 NYPD.

10 Q. This was part of your original agreement?

11 A. Yes.

12 Q. On your Federal case?

13 A. Yes.

14 Q. You have to cooperate with any law
15 enforcement people, is that what you're telling us?

16 A. Of crimes I may have been part of, or know
17 of, if I kept it to myself they could rip up my
18 agreement and everything else.

19 Q. You currently have an agreement, but it's
20 with the Feds?

21 A. Yes.

22 Q. A full written thing that you signed?

23 A. Yes.

24 Q. Do I have any written thing with you?

25 A. No.

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1 MS. MATTAWAY: At this time, I have
2 nothing further.

3 THE COURT: You may inquire.

4 CROSS EXAMINATION

5 BY MR. BRUNO:

6 Q. Good afternoon Mr. O'Brien.

7 A. Good afternoon.

8 Q. Now, you are currently in the process of
9 serving a 30 year prison term in the Federal system; am
10 I correct?

11 A. Yes.

12 Q. In fact, you were escorted here today by two
13 federal agents; am I correct?

14 A. Yes.

15 Q. And the crime for which you got the 30 years
16 wasn't murder, but it was related to a Federal drug
17 conspiracy of some type?

18 A. Yes.

19 Q. Did you assassinate a witness?

20 MS. MATTAWAY: Objection.

21 A. No.

22 THE COURT: He's answered already. Next
23 question.

24 Q. So any way, you're doing 30 years for a
25 murder related in some way, shape, or form to the drug

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1 industry; is that correct?

2 A. Technically I'm doing 30 years for
3 racketeering.

4 Q. Okay. And one aspect of the racketeering
5 enterprise was the murder of people, some involved --

6 A. Person, a person.

7 Q. A person. Okay. Now, in addition to that
8 matter, am I correct, that on March 11th of '88 you
9 pled guilty to the felony possession of a weapon; is
10 that correct?

11 A. Yes.

12 Q. And then in March of '89 a year later you
13 were convicted of cocaine possession?

14 A. In '89.

15 Q. March 9, 1989?

16 A. March 9, 1989, where is that at?

17 Q. Richmond which is Staten Island New York?

18 A. No, no, no. Richmond Virginia.

19 Q. Richmond Virginia. Forgive me, I assumed
20 that. Are you from Virginia originally?

21 A. No.

22 Q. You spent sometime there?

23 A. Yes.

24 Q. So, in fact sir that was March of '89 and
25 then in July of '89 this happens?

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1 A. Yes.

2 Q. And am I correct that when this happens you
3 were in some way either a fugitive or on a bench
4 warrant?

5 A. Yes, I was a fugitive.

6 Q. That was from the Richmond case or something
7 else?

8 A. No, that was from my probation.

9 Q. From?

10 A. From the original gun charge.

11 Q. From Brooklyn, Kings County?

12 A. Yes.

13 Q. In other words, you had failed to appear on
14 your probation matter?

15 A. Yes.

16 Q. You failed to report as they say?

17 A. Yes.

18 Q. Okay. Now, I'll try to pretty much go along
19 in order as follows:

20 Now, you testified early on when you, meaning
21 the four of you, arrived at that theater that night
22 July 3rd, really the 2nd of '89, it's you, Dean, Earl,
23 and Shaka who is deceased?

24 A. Right.

25 Q. In fact, Shaka's real name is Shawn, am I

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1 right?

2 A. Yes.

3 Q. And you said that all of you had arrived with
4 guns?

5 A. Right.

6 Q. But because of your flimsy T-shirt and the
7 breeze you felt that you could probably not conceal
8 yours?

9 A. Right.

10 Q. But the other three all kept their guns, had
11 their guns on them?

12 A. As far as I knew.

13 Q. Am I correct, when you first testified on
14 direct, when Ms. Mattaway questioned you, testified to
15 what you said in effect you all arrived with guns
16 because of your T-shirt issue, you left yours, the rest
17 all left the --

18 A. I corrected myself. There were two cars. I
19 had to remember that we came in two different cars so I
20 don't know what Beckford and Shaka did when they left
21 their car.

22 Q. I see. Okay. Now, let's address that now
23 then. Am I correct that getting towards the end of the
24 incident as it were when you see that the man, the man
25 was shot?

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1 A. Right.

2 Q. He was taking out a gun. You appealed to
3 Patches to draw his gun, correct?

4 A. I told him he got a gun.

5 Q. Did you not then testify that you testified I
6 had no gun so I needed him to pull?

7 A. I'm getting out of the way,

8 Q. Let me address this gun issue then as
9 follows:

10 You recall getting together with a Federal
11 agent, a Special Agent Diego Redondo in the company of
12 the city detective Stradford and they debriefed you
13 whatever term an officer would use. Do you recall
14 that?

15 A. Yes.

16 Q. By the way, you said it was '98, '99. That
17 was not January of '01?

18 A. January of '01. No. I said when I first got
19 in contact with Ms. Pheifer it was like '98.

20 Q. Do you agree that you got together you had
21 there whatever you wanted to call it, this sit down
22 with the Federal agent and Detective Stradford?

23 A. Yes.

24 Q. In January of '01?

25 A. Yes.

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1 Q. And on that occasion you discussed this
2 matter, I believe, at some length?

3 A. Yes.

4 Q. And am I correct that amongst other things
5 you indicated that you arrived along with Patchy, Dean,
6 Beckford, Shawn, and Earl?

7 A. Yes.

8 Q. Did you also at that time explain that there
9 were a couple of girlfriends with you? There was
10 Maureen and her sister Winjie?

11 A. Yes.

12 Q. Were they there?

13 A. Yes.

14 Q. You mentioned them today?

15 A. Yes.

16 Q. Now, give me a moment and we'll discuss guns.
17 Do you recall at that time advising the Federal Agent
18 Redondo and the city Detective Stradford?

19 A. Right.

20 Q. That Patchy then pulled out his own gun?

21 A. Yes.

22 Q. Something you also recalled noting that
23 Worrell, meaning the dead guy Shaka, that Shaka was
24 armed with a .357 loaded with .38 long bullets?

25 A. Yes.

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1 Q. Now, does that refresh your memory that in
2 fact at a minimum at least two of you were armed in
3 that theater?

4 A. Yes.

5 Q. You knew that in '01?

6 A. I never disputed that.

7 Q. You were getting a little coy here?

8 MS. MATTAWAY: Objection.

9 THE COURT: Sustained.

10 Q. So in other words, having refreshed your
11 memory with your '01 statement, is it not a fact that
12 at a minimum Patches and Shaka were armed?

13 A. Yes.

14 Q. In fact, you even specify we also said about
15 the .357, you even specify that the other guy Patches
16 had a loaded 9 millimeter, right?

17 A. I know he had a nine. I know that.

18 Q. 9 millimeter?

19 A. Yeah.

20 Q. You know that. You didn't say it on direct?

21 A. What am I supposed to say?

22 THE COURT: Ask a question. Answer the
23 question Mr. O'Brien.

24 Q. You knew it. Let me move on. Sorry to jump
25 around. Did you not say when this argument first

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1 starts in the popcorn line?

2 A. Right.

3 Q. Did you not say your comments were "yeah go,
4 we alright?" You said "yeah go we're alright." Did
5 you say that on direct?

6 A. I said that to myself. I'm thinking to
7 myself. I'm with four dudes. He's one person.

8 Q. Yeah. We're alright, meaning we're prepared
9 for this; am I correct?

10 A. Yes.

11 Q. You agree?

12 A. Yes.

13 Q. And you then elaborated on direct because the
14 DA asked you what does that mean.

15 Well, you know, there was four of us and we
16 are strapped, correct?

17 A. I didn't say we was strapped. I didn't have
18 no gun. I told you that before.

19 MS. MATTAWAY: Objection. The witness
20 is trying to answer.

21 A. Go ahead.

22 Q. Go ahead. There were four of us and we were
23 or are strapped, but I'm acknowledging I acknowledge
24 you testified that you were the one person without the
25 gun alright?

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1 A. Okay.

2 Q. What I'm getting at is this. There were four
3 of you. That is why you were confident. But also
4 persons in your group was strapped?

5 A. Right.

6 Q. For the juror's edification, am I correct
7 that the term strapped would be a street term for what
8 carrying a gun?

9 A. Yes.

10 Q. It goes back to the cowboys strapping on a
11 six gun, correct?

12 A. Yes.

13 Q. Now, is it clear without like bickering about
14 it at least two of you, at least two of you of your
15 party Shaka and Patches were armed in that theater?

16 A. Yes.

17 Q. Okay. By the way, prior to all of us, prior
18 to getting involved in this case, you're in the Federal
19 witness program; am I correct?

20 A. Yes.

21 Q. Why did you cooperate in another matter, sir?

22 MS. MATTAWAY: Objection.

23 THE COURT: Sustained as to the way you
24 phrased that.

25 Q. What was the reason you were placed in that

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1 program?

2 MS. MATTAWAY: I object.

3 THE COURT: I'll allow it. You may
4 answer.

5 A. Because I cooperated.

6 Q. Against whom?

7 MS. MATTAWAY: Objection.

8 THE COURT: Sustained.

9 Q. Then all I ask when you say cooperated, it
10 wasn't -- you don't mean this is prior to this case?

11 A. Yes.

12 Q. You cooperated in the case in which you
13 ultimately were convicted?

14 A. Right.

15 Q. So in other words, is it fair to say you were
16 facing even -- thirty years is an awfully long time.
17 You were facing exposure of much more than the thirty?

18 A. Yes.

19 Q. And you had in fact cooperated against
20 co-defendants?

21 A. Yes.

22 Q. Now, you made reference to again in so many
23 words first bringing up the subject again meaning since
24 '89 you then said you addressed this again in '96; am I
25 correct?

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1 A. Yes.

2 Q. You said in '96 this subject came up in
3 speaking with Federal authorities, correct?

4 A. Yes.

5 Q. Am I correct that at that time you were
6 wanted or being sought being investigated for numerous
7 murders between here and Virginia?

8 A. No.

9 MS. MATTAWAY: I object.

10 THE COURT: Overruled. Next question.

11 MR. BRUNO: I'm sorry. You answered.

12 THE COURT: He said no. Next question.

13 Q. Am I correct, in fact, that in March of '96
14 how this first comes to your attention is that you're
15 brought in as a suspect in this murder?

16 A. What?

17 Q. Yes.

18 A. No. I think you got your paperwork mixed up.

19 Q. Did you have any dealings with a Brooklyn
20 Detective Dave Carbone?

21 A. Yes.

22 Q. And you were aware of a memo to another
23 officer, another detective saying a perp named Andy
24 O'Brien from Virginia, we're going to charge him with
25 other homicides and one of them is ours?

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1 A. I don't know anything.

2 Q. You're a party to such a --

3 A. I never knew about that.

4 Q. Brooklyn number 615948 Shawn Worrell?

5 A. This is the first time I'm hearing this.

6 Q. Victim Shawn, victim Worrell, that was Shaka,
7 right?

8 A. This is the first time I'm hearing it.

9 Q. Killed at Whitestone Cinema?

10 A. This is the first time I'm hearing this.

11 Q. First you're hearing it?

12 A. Yes.

13 MS. MATTAWAY: Objection, asked and
14 answered.

15 THE COURT: Overruled.

16 Q. We'll move on. In other words, you're saying
17 you came forward in '96. For your own regard, your
18 federal engagement, it wasn't because you were pulled
19 in as a suspect?

20 A. No.

21 Q. By the way, on the afternoon after this
22 occurred say about 1 o'clock on July 3, '89, did you
23 call Shaka's home?

24 A. Yes.

25 Q. And you spoke to his mom?

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1 A. No, it was his sister.

2 Q. His sister. Did you ask if Shaka had gotten
3 home yet?

4 A. No.

5 Q. Did you advise that sister that Shawn had
6 gotten into a little argument in the movies and you got
7 grazed?

8 A. No. I told him that he got shot in the movie
9 theater.

10 Q. I see. So would your answer then be that
11 again I mixed up paperwork?

12 A. Yes, I guess so. You must have.

13 Q. Maybe I'm tired today.

14 MS. MATTAWAY: Objection.

15 THE COURT: Let's just ask questions and
16 avoid any commentary.

17 Q. Now, on that popcorn line when this whole
18 incident is precipitated, you get into the argument
19 with the man; am I correct?

20 A. Yes.

21 Q. What was Shaka's position? Was he getting
22 involved or basically laying back?

23 A. He was laying back.

24 Q. By the way, this person you had the beef
25 with, was it that he said -- you said he said like

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1 arrogantly or rudely, what's up man or get out of the
2 line man; am I correct?

3 A. Yes.

4 Q. When you were first interviewed in '91, did
5 you say the incident was he said my boy?

6 A. My man, it was disrespectful.

7 Q. You were angry?

8 A. Am I angry now?

9 Q. No. You were angry?

10 A. Yeah.

11 Q. And the man said he'd go for his piece?

12 A. Yes.

13 Q. But you guys were strapped so that was okay,
14 right?

15 By the way, as a minor point, when you look at the
16 exhibits, you said all these theaters tend to look the
17 same, right?

18 A. Yes.

19 Q. You said that the rug in that picture looked
20 familiar?

21 A. Yes.

22 Q. It's been eighteen years, you think it's the
23 same carpet?

24 A. Probably not. I'm just saying the movie
25 theater same carpet, same concession stand.

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1 Q. Every theater across the state, I know. All
2 right. So you then say that the person ultimately
3 comes into the actual theater where they started to
4 show the film?

5 A. Yes.

6 Q. And says in substance when the movie is over
7 it's you and me, correct?

8 A. Yes.

9 Q. Now, again, whatever street interpretation
10 that means we're gonna fight it out; is that correct?

11 A. Yes.

12 Q. At that point there is no reference to
13 shooting anyone?

14 A. I don't know about fighting. I don't know
15 about no fighting.

16 Q. Okay.

17 A. They don't fight in the street no more. I
18 don't know where you been.

19 Q. That's pretty sad you know.

20 A. I feel so.

21 (Continued on the next page)

22

23

24

25

1 CROSS-EXAMINATION

2 BY MR. BRUNO (Cont'd):

3 Q. In other words, let me understand. Your
4 perception is that a fight on the popcorn line,
5 it has to result in a shoot-out?

6 A. Not that it has to, but if somebody
7 leaves and comes back, they didn't go to get
8 brass knuckles. You ain't thinking that. And
9 it's four of us. This guy is being cocky. He
10 is walking up with four guys. He got to have a
11 gun.

12 Q. I wasn't thinking. That's true.
13 That's right. Your streets understand that he
14 must be now armed. So you guys getting ready to
15 pull, am I correct?

16 A. I didn't have nothing to pull.

17 Q. You didn't, but at a minimum Shaka and
18 Patchy had ?

19 A. Shaka said "yo, this guy is bluffing,
20 don't even worry about it." They want to
21 continue watching the movie. Patchy was the one
22 who got up and started walking out the movie
23 theatre.

24 Q. I don't want to debate, sincerely, but a
25 minute ago you took the position like where I

1 have been but -- I mean, there is no popcorn at
2 stake here, so I don't take an offence to where
3 I have been. You have corrected me.

4 The guy left. It's obvious he is
5 armed. That's your interpretation. It's
6 obvious you are interpreting. Patchy and Shaka
7 are going to be prepared to defend themselves,
8 in your perception.

9 MS. MATTAWAY: Objection.

10 THE COURT: Sustained.

11 Q. Let me ask. Are you trying to say to
12 this jury, because it was kind of ambiguous on
13 direct -- are you trying to say to this jury
14 that neither Shaka or Patchy pulled there
15 weapons?

16 A. What you mean, as far as what?

17 Q. Had their guns out?

18 A. Not when we first walked up the aisle.

19 Q. At some point, did they have their guns
20 out?

21 A. When I yell out he had a gun, yelled out
22 he had a gun, they pulled -- Patches reached for
23 his gun. Shaka was behind. I don't know what he
24 was reaching for.

25 MS. MATTAWAY: Objection. The witness

1 is still trying to answer.

2 A. Shaka is behind. I didn't say I seen him
3 pull a gun?

4 Q. On direct you stated that once the smoke
5 settled and it's over -- once the smoke settled
6 and you were leaving, you glanced at Shaka on
7 the floor, you said.

8 A. Yes?

9 Q. Did you notice clutching in his right
10 hand was his gun? That you didn't notice?

11 A. I didn't even notice he was dead.

12 Q. There will be cops here to testify to
13 that.

14 MS. MATTAWAY: Objection.

15 THE COURT: Sustained.

16 Q. So you could tell the jury now,
17 definitively, that Patchy did pull his weapon?

18 A. Yes.

19 Q. And, again -- I know it's a millisecond.
20 It had to be. But at the point that shots
21 started to ring out, is Patchy in front of you
22 or in the back of you?

23 A. He is like on the other side of me, like
24 inches away from me. Just right there.

25 Q. Starting from the right, the way you

1 gestured, it looks like he would have been just
2 behind your right shoulder?

3 A. Just behind me.

4 Q. Am I correct?

5 A. Yes, just behind me

6 Q. Or similar?

7 A. I think it is the left. I am not sure,
8 but I think it's left.

9 Q. In other words, he is within, it might be
10 -- if I could summarize, he is within inches of
11 your shoulder--

12 A. Yes.

13 Q. --behind you?

14 A. Yes.

15 Q. And you are now confident that he had
16 drawn his weapon, his nine?

17 A. Well, no, I wasn't confident of that.
18 The only time I seen the weapon is when -- after
19 the shots.

20 Q. So his gun was out?

21 MS. MATTAWAY: Objection.

22 A. After the shots.

23 THE COURT: Overruled.

24 Q. In other words, your testimony today for
25 this jury is that at least two of your friends

1 are armed, they see a man pull a gun?

2 A. They didn't even see the gun. I saw the
3 gun. I don't --

4 Q. It's a gun. It's a gun.

5 So you want to say to the jury that, in
6 other words, that night in the showdown like you
7 were the good guys. They didn't fire. They
8 just pulled their guns. They didn't fire.

9 Correct?

10 A. Patchy didn't have time to fire no shot
11 because after the shots people were jumping up.
12 You are going to shoot? You got people running
13 in front of you. Who you are going to shoot?
14 You just going to shoot anybody?

15 Q. You know, sir, there is a good chance
16 that Patchy is the one that grazed you?

17 THE COURT: Sustained.

18 Q. This ain't Disneyland.

19 MS. MATTAWAY: Objection.

20 THE COURT: Sustained. Move on.

21 Q. You testified on direct, you are all now
22 at the top of the theater, meaning closer to the
23 door as opposed to the street. Patchy reached
24 into his waistband for his gun?

25 A. Right.

1 Q. So we know he draw.

2 MS. MATTAWAY: Objection.

3 THE COURT: Sustained.

4 MR. BRUNO: I am sorry. I was thinking
5 out loud.

6 THE COURT: Strike it.

7 Q. You are then saying -- you testified
8 moments later that once again -- once this
9 shooting ends, Patchy -- by the way, is Patches
10 or Patchy?

11 A. Patchy.

12 Q. Patchy?

13 A. Yes.

14 Q. Like "EE"?

15 A. Yes.

16 Q. Because the Feds call him Patchy.

17 MS. MATTAWAY: Objection.

18 THE COURT: Overruled. Move on.

19 Q. That's what I am saying.

20 THE COURT: Move on.

21 Q. So then the shooting terminates, and you
22 said Patchy chases after the guy with the gun?

23 A. Yes.

24 Q. Thereby shooting -- it is obvious that
25 Patchy has his gun out?

1 A. Yes.

2 Q. Because you are chasing a guy with a gun,
3 right?

4 A. Yes.

5 Q. And you followed after Patchy?

6 A. Yes.

7 Q. On direct you testified you assumed the
8 shots came from the other guy?

9 A. What you mean?

10 Q. In other words, after the first shot you
11 took a--

12 THE COURT: Sustained. Don't say
13 anything. That's struck from the record.

14 Q. So then it's fair to say though once you
15 see the first muzzle flash and you take a dive,
16 you don't know who is shooting at whom. Am I
17 correct? Is that a fair statement?

18 A. I guess you could say that.

19 Q. There is no confusion here that that
20 incident we are talking about occurred on July 3
21 '89, correct?

22 A. If there is any confusion.

23 Q. I am saying -- withdrawn. I will
24 rephrase. This incident occurred July 3, '89?

25 A. July 3, '89?

1 Q. Correct.

2 A. I guess.

3 Q. So it's important -- withdrawn.

4 You were there the night that Shaka got
5 killed?

6 A. Yes.

7 Q. And today in court you identified this
8 man as the shooter, correct?

9 A. Yes.

10 Q. So let's just for this moment refer to
11 him, if that's the case. That night that Shaka
12 was killed is the first time you ever saw that
13 man, correct?

14 A. Yes.

15 Q. And this is the second time you have seen
16 him in person?

17 A. Yes.

18 Q. 18 years later?

19 A. Yes.

20 Q. And you come to court with your Feds with
21 your shackles and you identified him as the
22 shooter; is that correct?

23 A. Yes.

24 Q. Sir, you have been around. Do you find--

25 MS. MATTAWAY: Objection.

1 THE COURT: Sustained.

2 Q. Your record speaks for itself. Do you
3 find that believable?

4 MS. MATTAWAY Objection.

5 THE COURT: Sustained.

6 MR. BRUNO: I have nothing, further.

7 THE COURT: Anything further?

8 MS. MATTAWAY: Yes.

9 REDIRECT EXAMINATION

10 BY MS. MATTAWAY:

11 Q. Mr. O'Brien, has the shooter's appearance
12 changed in any way in seventeen years to you?

13 A. Yes.

14 Q. What changed about the way he looks
15 today?

16 A. He looks bigger.

17 Q. Bigger?

18 A. Gained weight. Just bigger person. His
19 face got fuller.

20 Q. I'd like to ask you about the shots.
21 After the first shot, the one you saw with the
22 muzzle flash, do you remember what it sounded
23 like?

24 A. If I remember what it sounded like?

25 MR. BRUNO: Objection.

1 Q. The noise.

2 THE COURT: Sustained.

3 Q. You remember hearing -- I apologize --

4 THE COURT: Sustained as to noise.

5 Next question.

6 Q. Did the shots that you heard after the
7 first one sound the same?

8 A. Sounded similar to me. Sounded the same
9 to me. I couldn't tell no big difference.

10 Q. Now, when Patchy was reaching for his gun
11 as you were going up the aisle, how far out of
12 his waistband did you see Patchy actually get
13 the gun?

14 A. I didn't see the gun until we came up off
15 the floor.

16 Q. Did you ever see Patchy fire the gun?

17 A. No.

18 Q. After you see Patchy reaching for the
19 gun, at what point did you dive?

20 A. Basically like simultaneously.

21 Q. When you dove, did you see where Patchy
22 went or what he was doing?

23 A. No. He dived on the other side.

24 Q. When you say "the other side," you are
25 talking the other side of the aisle?

1 A. We are standing in the aisle, so he dive
2 on one side, I dive on the other side.

3 Q. Did you dive into people?

4 A. I didn't hit no people. He probably got
5 into the seats or whatever.

6 MR. BRUNO: Objection as to what he
7 probably did?

8 A. I don't know if he hit people or not.

9 Q. From the direction you are diving, do you
10 see him diving?

11 A. I could see him moving, yes, like moving.

12 Q. All right.

13 Can you tell us, if you remember, what
14 you saw between the time -- Patchy is reaching
15 and he is diving, and you see him make a
16 movement to his waist, but he doesn't get the
17 gun out. The next you see is he dives. What is
18 he doing, if anything, in between?

19 A. Well, when the shots rang out, we are
20 both down on the floor. I go down, he goes
21 down. And then, you know, then people started
22 running over us and everything. And I seen he
23 had the gun in his hand by that time.

24 Q. Okay. Do you look across the aisle and
25 see him where he is? Is that how you see him?

1 MR. BRUNO: Objection to the leading.

2 THE COURT: Sustained as to leading
3 nature of the question.

4 MS. MATTAWAY: I apologize.

5 Q. Tell us what you see?

6 A. He is not that far from me. We is just
7 like right across each other.

8 Q. Are you flat or are you crouching? What
9 where you doing?

10 A. We are basically flat, but then we are
11 getting up.

12 Q. Do you see the gun in Patchy's hand when
13 he is getting up?

14 A. Yes.

15 Q. And what is he doing with the gun?

16 A. He is like holding it and looking like
17 this (indicating), you know. And people is
18 running and everything else. And that's when he
19 gets up and start going after the guy. I
20 started going behind him.

21 Q. When Patchy is going, does he have the
22 gun?

23 A. He has the gun out, but he has it like
24 like down (indicating).

25 Q. Can you stand up and show us how he is

1 holding the gun?

2 A. He has it like this (indicating), and he
3 is running up. I guess he don't want people to
4 see it and everything. We run up the aisle and
5 we seen the guy go like, he went through the
6 exit. That's when security and everything was
7 walking by. And I looked at Patchy. That's
8 when he like, he put it in his pocket.

9 Q. The record should reflect that the
10 witness stood and he made a motion like he was
11 holding a gun, but down at his side or in front
12 of him?

13 A. Yes.

14 Q. How was--

15 A. Holding it by his leg because you got
16 people running around so, you know, and they
17 panicking, so you--

18 Q. All right. When you and Patchy were down
19 before the run out after the shooter, did Shaka
20 ever run past you?

21 A. No. You are saying when, after the
22 shooting?

23 Q. Yes. Well, after--

24 MR. BRUNO: Objection. Shaka was
25 dead.

1 THE COURT: Sustained.

2 Q. Shaka always stayed behind you?

3 A. Yes.

4 Q. When Patchy was reaching for his gun, had
5 the first shot with the muzzle flash happened
6 already?

7 A. No.

8 MR. BRUNO: Objection. Asked and
9 answered. He is not sure.

10 THE COURT: Sustained.

11 Q. The muzzle flash that you saw, when you
12 saw it, were you standing up?

13 MR. BRUNO: Objection. Asked and
14 answered. Dove after the first flash.

15 THE COURT: Sustained.

16 Q. Was Patch up? Could you see?

17 MR. BRUNO: Objection asked and
18 answered.

19 THE COURT: Sustained.

20 Q. When the shooter said earlier on when he
21 came down the aisle after the movies "it's me
22 and you," who is you?

23 A. He was talking to me.

24 Q. Just you or you and Patchy?

25 MR. BRUNO: Objection, your Honor.

1 THE COURT: Sustained.

2 Q. When the shooter earlier at the popcorn
3 line called you "boy," is that before or after
4 you called him a "pussy"?

5 A. He was talking to Shaka. He wasn't
6 talking to me.

7 Q. When he called Shaka "boy," was that
8 before or after you called him a "pussy"?

9 A. That was before.

10 MR. BRUNO: Objection. Asked
11 answered.

12 THE COURT: Overruled.

13 A. That was before.

14 Q. Apart from these words "boy, pussy," can
15 you tell us any other derogatory things you guys
16 were saying to each other?

17 MR. BRUNO: Objection. Beyond the
18 scope.

19 THE COURT: Sustained.

20 Q. Do you remember today what you told
21 Shaka's sister eighteen years ago on the phone?

22 A. I remember telling her that her brother
23 got shot in the movie theatre, the Whitestone
24 Movie Theatre.

25 Q. Do you remember what time of day you made

1 the call?

2 A. I believe it was late that night. I am
3 not sure. But I thought it was -- I am thinking
4 it was late that night.

5 Q. You do remember calling Shaka's home
6 though?

7 A. Yes.

8 Q. When you stated that you thought to
9 yourself "yeah, we are all right" -- do you
10 remember when you said that in your testimony?

11 A. Yes.

12 Q. Why did you think you were all right?

13 MR. BRUNO: Objection. Asked and
14 answered about twelve times.

15 THE COURT: Sustained.

16 Q. Was it about the numbers or the guns.

17 MR. BRUNO: Objection. Asked and
18 answered. It was both. It was four of us,
19 three of us with guns?

20 MS. MATTAWAY: I object to defense
21 counsel's characterization.

22 MR. BRUNO: You have the minutes.
23 Asking twelve times doesn't change it.

24 THE COURT: I am going to tell both of
25 you this one last time, there will be none of

1 that in front of my courtroom from anybody.

2 MR. BRUNO: I apologize.

3 THE COURT: The objection to that
4 particular question is overruled. You may
5 answer.

6 A. Ask the question again, please?

7 Q. You made a statement that you felt you
8 were all right?

9 A. Yes.

10 Q. Did you say that because it was a matter
11 of numbers, four versus one, or because you were
12 armed versus one?

13 A. Probably both.

14 Q. Probably both?

15 A. Yes.

16 Q. How did you know that Shaka was armed?

17 A. Because I seen him with the gun earlier.

18 Q. When was that?

19 A. Earlier.

20 THE COURT: Sustained. Next question.

21 Q. At the time this happened, July 3 '89,
22 you were a fugitive?

23 A. Yes.

24 Q. Did law enforcement try to contact you,
25 at this time?

1 A. Yes. I believe they did.

2 Q. And were you cooperative within days of
3 this incident?

4 A. No.

5 Q. Why not?

6 A. Because more than likely they would
7 arrested me. I would have been arrested.

8 Q. Why would you have been arrested him?

9 A. Because I was a fugitive.

10 Q. But did you think you would be arrested
11 for anything to do with this incident?

12 A. No.

13 Q. And do you know how much time you faced
14 for being a fugitive for violating your
15 probation?

16 A. I guess five years.

17 MR. BRUNO: Objection as to his
18 guessing.

19 THE COURT: Sustained.

20 A. I didn't know at the time.

21 Q. How long had you been wanted for the gun
22 charge at the time this happened?

23 A. '89. Probably a year, a year and a half
24 or something.

25 MR. BRUNO: Objection, your Honor.

1 THE COURT: I will allow that. Next
2 question.

3 Q. Apart from the time that you cooperated
4 with law enforcement against your codefendants
5 on your other case and today, have you done this
6 any other time?

7 THE COURT: Done what any other time?

8 MS. MATTAWAY: Testifying in court.

9 A. Between then and now?

10 Q. Yes.

11 A. No.

12 MS. MATTAWAY: Nothing further.

13 RE-CROSS-EXAMINATION

14 BY MR. BRUNO:

15 Q. So let's start with your last answer when
16 you said "between then and now, no."

17 Did you cooperate prior to being a
18 cooperating witness on the conspiracy on which
19 you were convicted?

20 A. No.

21 Q. Now, couple of questions.

22 You indicated that at the time of the
23 this incident, meaning roughly early July '89,
24 you didn't want to cooperate with authorities
25 because you were a fugitive, correct?

1 A. Yes.

2 Q. Let's clarify something.

3 Number one, the District Attorney
4 referred to your predicament as being wanted on
5 gun charges, correct?

6 A. Yes.

7 Q. Am I correct that's a mistake. You
8 already had pled guilty and had commenced
9 probation about four months earlier. Am I
10 correct?

11 A. Four months earlier?

12 Q. Yes. Let me see if I am correct. If I
13 misspoke, I will admit it.

14 Withdrawn. A year earlier, am I correct
15 that on March 11, 1988 you took a plea of guilty
16 to possession of a weapon in Brooklyn?

17 A. Yes.

18 Q. So it wasn't out of being wanted for a
19 gun, it said you pled guilty and didn't complete
20 your probation period; am I correct?

21 A. Yes.

22 Q. And let me understand again. I think you
23 are familiar with the system. You didn't
24 cooperate in the murder case in which your good
25 buddy was a victim?

1 A. Right.

2 Q. You agreed to punishment for not
3 reporting to probation, which is minimal?

4 A. That's not the only thing.

5 Q. You had more cooking?

6 A. Because I said earlier back then we
7 didn't cooperate with the police. This is what I
8 said.

9 Q. So it wasn't that you were wanted for a
10 year and a half, and it wasn't that you were
11 afraid of going to jail for your simple
12 violation of probation, correct?

13 A. No. That wasn't it.

14 Q. So, in other words, now you are telling
15 us, now that I ask, the bigger factor is--

16 A. I said this earlier though.

17 MS. MATTAWAY: Objection.

18 THE COURT: Mr. Bruno, you ask
19 questions, not make comments.

20 Q. Now, the bigger or biggest factor in your
21 mind was that it shouldn't be resolved with the
22 authorities, it should be resolved with street
23 justice; is that correct?

24 A. At the time, yes.

25 Q. By the way, you were asked about these

1 phone calls. Again, the next afternoon or
2 evening you called Shaka's home, correct?

3 A. I don't know if it's next evening. I
4 thought it was the same night.

5 Q. And you reached his sister you said?

6 A. Yes.

7 Q. Was his sister's name Dickie?

8 A. I am not sure.

9 Q. You are not sure. Okay. You said you
10 told her he had been shot?

11 A. Yes.

12 Q. You didn't call and say is he home, like
13 you were trying to get information?

14 A. No.

15 Q. You didn't tell her you had a grazed
16 wound?

17 A. No.

18 Q. Did you call later that same day and
19 pretty much ask the same thing, is Shaka home
20 yet?

21 A. No.

22 Q. Did you give her a beeper number to reach
23 you if she needed you?

24 A. I probably gave her a beeper number.

25 Q. It's turns out it was a phony beeper

1 number?

2 A. I don't know about that. A beeper number
3 and everything, I can't remember that far back
4 the beeper.

5 MR. BRUNO: I have nothing further.

6 THE COURT: Anything else.

7 MS. MATTAWAY: Yes.

8 REDIRECT EXAMINATION

9 BY MS. MATTAWAY:

10 Q. Have you had any contact with Shaka's
11 family since that phone call?

12 A. No. There was only one thing back then.
13 Shaka had a cousin that I seen in the street,
14 and we sat down and talked about it. That was
15 it.

16 Q. All right. But his family who you
17 reached, the sister, were you close with her?

18 MR. BRUNO: Objection. Beyond the
19 scope and irrelevant.

20 THE COURT: Sustained.

21 Q. Had you called Shaka at home at that
22 number that you called that day?

23 A. Excuse me?

24 Q. Had you previously called him at that
25 number? That's how you had his number?

1 A. I think Patchy had his number. I never
2 called that house.

3 Q. What made you decide to call his home?

4 A. Well, because I knew that he was there in
5 the movie theatre dead and his family might want
6 to know, so I called there.

7 MS. MATTAWAY: Nothing further.

8 MR. BRUNO: May I?

9 THE COURT: Go ahead.

10 RE-CROSS EXAMINATION

11 BY MR. BRUNO:

12 Q. Two things, sir.

13 You said you knew he was dead in the
14 theatre so you wanted the family to know,
15 correct?

16 A. Yes.

17 Q. Would it shock you to know there was a
18 missing person's case open on Shaka for two days
19 because nobody knew where he was then?

20 THE PEOPLE: Objection.

21 THE COURT: Sustained.

22 Q. Do you realize they had to take his body
23 to the morgue as John Doe?

24 MR. MATTAWAY: Objection.

25 THE COURT: Mr. Bruno, stop.

1 Q. You were close with his sister you said?

2 MS. MATTAWAY: Objection.

3 THE COURT: That's not his testimony.

4 Q. You realize the person you called wasn't
5 the sister, it was his cousin.

6 MS. MATTAWAY: Objection.

7 THE COURT: Sustained.

8 MR. BRUNO: Nothing further.

9 THE WITNESS: I don't understand.

10 MR. BRUNO: Excuse me?

11 THE WITNESS: I said I don't understand
12 the difference. What's the difference.

13 MR. BRUNO: I though he said
14 something--

15 THE COURT: Mr. Bruno, you will be
16 fine. Watch your commentary.

17 Ladies and gentlemen of the jury, we
18 are going to break for lunch. As always, do not
19 discuss the case among yourselves. Do not allow
20 anyone to discuss the case with you. Keep an
21 open mind.

22 I will see back here at 2:15.

23 (Whereupon, the jury exits the
24 courtroom).

25 THE COURT: I will see everybody at

1 2:15.

2 * * * *

3 (Whereupon, the following takes place
4 in open court, on the record, in the presence of
5 Court, counsel, and the defendant, out of the
6 presence of the jury:)

7 MR. BRUNO: I have a statement for the
8 record before we break, if you please.

9 Shall I proceed?

10 THE COURT: Go ahead.

11 MR. BRUNO: This is an extremely
12 serious matter, this trial is, and I want the
13 record to be crystal clear as to following.
14 Well, I hate to make such a statement, but the
15 People have proceeded in extremely bad faith
16 thus far. Their conduct with the last witness
17 was one of the worst examples for the following
18 reason:

19 I have now stated repeatedly in other
20 context that it's undisputed the victim died
21 clutching the stolen .38 caliber pistol,
22 literally clutching it. The off duty cop, as he
23 told you, recovered it, and it's vouchered with
24 a spent round, I note.

25 The District Attorney embarked not

1 once, but half a dozen times on a line of
2 questioning in which she is trying to eradicate
3 the possibility that the victim was armed and,
4 in fact, fired. That's extreme bad faith.

5 She may be terrified that there is a
6 strong self-defense issue here. But as an
7 officer of the court, as a prosecutor, she is
8 obligated to act in good faith. To actively
9 pursue a line of questioning trying to
10 obliterate and ignore an obvious fact that she
11 is very much cognizant of, I mean, it wasn't
12 some street witness, it wasn't some person doing
13 30 years, it was a city cop who recovers the gun
14 and vouchers it. Their conduct is outrageous,
15 and I want the record crystal clear as to the
16 bad faith conduct in this trial.

17 THE COURT: Ms. Mattaway, you wish to
18 respond?

19 MS. MATTAWAY: I am not terrified of
20 anything.

21 MR. BRUNO: Well, your actions don't
22 speak that way.

23 THE COURT: Stop the commentary. I
24 will make that appropriate rulings when I deem
25 it necessary.

1 I will see everybody back here at
2 2:15. I strongly suggest that neither one of
3 you drink any coffee. You are hyper enough as
4 it is. And, again, everybody do not
5 misinterpret my demeanor. You do not want to
6 cross me. I happen to grow up on the same street
7 that everybody else in this case comes from.

8 L U N C H R E C E S S

9 (Continued on the next page.)

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